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नई दिल्ली, शनिवार, मार्च 12, 1988/फालगुन 22, 1909

No. ४]

NEW DELHI, SATURDAY, MARCH 12, 1988/PHALGUNA 22, 1909

इस भाग में निम्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(तम संघ और प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए सांविधिक आदेश और अधिसंचाराद
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 8 फरवरी 1988

आ.आ. १५—निर्वाचन आयोग का समाधान हो गया है कि नीचे दी सारणी के स्तम्भ (२) में थारा विनिर्दिष्ट विधान सभा के माध्यात्र/उप निर्वाचन के लिए जो रत्नम् (३) में विनिर्दिष्ट निर्वाचन-धेन से है वहाँ है, स्तम्भ (४) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक व्यक्ति, लोक प्रतिनिधित्व अधिनियम, 1951 तथा नड़ीन बताएँ गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (५) में प्रथा दर्जित प्राप्त निर्वाचन व्यक्ति का नेतृत्व समय के अन्तर्वन और अधिकार अपेक्षित रूप से दाखिल करने से अमर्कल रहा है;

और उक्त अधिनियमों ने नमूने मूल्यान दिए जाने पर भी उक्त अमर्कलता के लिए या नो कोई कारण अक्षय स्थानीकरण नहीं विद्या है या उनके द्वारा दिए गए अध्यावेदनों पर, यह कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह गमाधान हो गया है कि उनके पास उक्त ग्रामपंचायत के "लिए कोई पर्याप्त कारण या न्यायावाचित्य नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुमत्य में नीचे की सारणी के स्तम्भ (४) में विनिर्दिष्ट व्यक्तियों को मंत्री के किसी भी सदन के या किसी राज्य/संघ राज्य-भेन की विधान सभा अवयवा विधान परिषद के सदस्य चुने जाने और होने के लिए आदेश को नारीख से मोन वर्ष की कालावधि के लिए निरीकृत घोषित करता है :-

सारणी

क्र. सं.	निर्वाचन वा विवरण	निर्वाचन-धेन की क्र. सं. और नाम	निर्वाचन लड़ने वाले व्यक्ति का नाम	निर्वाचन वा कारण
1	2	3	4	5
126-केरल विधान सभा का ग्रामारण	52-कोयम्बत्तम (ग.ज.)	श्री पी. शनकरम, मुख्य था. कांडली कुलकर्णी दिव्यानन्द कांडली, कांयम्बत्तम, तिळा गावावाद,	कोई भी नेतृत्व दाखिल नहीं किया।	वर्ष ।

1	2	3	4	5
127-केरल विधान सभा का माध्यम प्रियंका, 1987	94-पलाई		श्री ई. भार. कर्णाकरन, दत्तात्रेयमित्र, डा. प. पवाई, जिला काशीपम, केरल।	कोई भा. लेखा दाखिल नहीं किया।
128- -बही-	94-पलाई		जीवेक, श्रीकरेत्र, डा. प. कीजर, जिला कोट्टायम, केरल।	-बही-
129- -बही-	91-गुडमानूर		परापित कृष्णपात परापित हासन, श्रीरामकारा पूर्व, जिला कोट्टायम, केरल।	-बही-
130- -बही-	91-गुडमानूर		पौ. प. विजय वेष्टनविल, पुल्लम्पुनपिल, थीर्थमवादी, नीमदर, जिला कोट्टायम, केरल।	-बही-

[76कि./87(126 से 130)]

आवेदन में,
सो. पू. राज. सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 8th February, 1988

O.N. 25.—Whereas the election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People/Legislative Assembly specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses in the manner/has not lodged the account at all as shown in column (5) of the said Table as required by the Repre-

tation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S.No.	Particulars of election	S.No. and name of constituency	Name of contesting candidates	Reasons for disqualification
1	2	3	4	5
126.	General Election to the Kerala Legislative Assembly-1987	52—Coyalmannam (SC)	S/Shri P. Thayakan, S/o Pazhani, Kulakkad Harijan Colony, Coyalmannam, Distt. Palghat, Kerala.	Account not lodged at all
127.	-do-	94—Palai	T.R. Karunakaran, Thattathuparambil, Palai. P.D., Distt. Kottayam, Kerala.	-do-
128.	-do-	-do-	Joseph, Aikkatethu, Keezhoor P.D., Distt. Kottayam, Kerala.	-do-

1	2	3	4	5
129.	General Election to the Kerala Legislative Assembly-1987	91—Ettumanoor	Parayil Kuttiappan, Parayil House, Arppookara East, Distt. Kottayam, Kerala.	Account no lodged at all
130.	-do-	-do-	P.S. Vijayan Perumbunchayil, Perumbunchayil, Thiruvampadi, Neezhur, Distt. Kottayam, Kerala.	

[No. 76/KL/87(126 to 130)]

By Order,
C.L. ROSE, Secy.

नई दिल्ली, 18 फरवरी, 1988

आ.प्र. 26 --लोक प्रतिनिधित्व प्रधिनियम, 1951 (1951 का 43) की धारा 106 के प्रत्युत्तर में, निवाचित आयोग, 1985 की निवाचित अर्जी सं. 1 में उड़ीसा उच्च न्यायालय, कटक के तारीख 18-11-1987 के आदेश को एतद्वारा प्रकाशित करता है।

[सं. 82/उडीसा/(1/85)/87]

ग्रामीण में,
बलकृष्ण मिह, अश्वर मण्डि ब

New Delhi, the 18th February, 1988

O.N. 26.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Orissa dated 17th November, 1987 Election Petition No. 1 of 1985.

[No. 82/OR/(1/85)/87]

IN THE HIGH COURT OF ORISSA, CUTTACK

Election Petition No. 1 of 1985

In the matter of an application under sections 100 and 101 of the Representation of the People Act, 1951

Rabi Ray ...Petitioner

Vrs

(1) Lakshman Mallick,
(2) Yudhistira Das, and
(3) Surendra Nath Mishra ...Respondents.

For the Petitioner—M/s. R. Mohanty and B. Misra.

For Respondent No. 1—M/s. G. Rath, B. B. Mohanty and S. K. Das.

For Respondents 2 & 3—None.

(Decided on 14th May, 1987)

PRESENT:

The honourable Mr. Justice K. P. Mohapatra.

K. P. Mohapatra, J.—In this election petition under sections 100 and 101 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') the petitioner, a defeated candidate who had contested in the general elec-

tion in 7-Jagatsinghpur Parliamentary Constituency, has prayed for the following reliefs:—

- (a) To declare the petitioner as duly elected for having received majority of the valid votes; and
- (b) To allow inspection and recounting of votes after calling for the necessary and relevant documents.
- 2. The facts pleaded by the petitioner are summarised below:—
 - (i) The 8th general election to the House of the People was notified on 20th November, 1984 by an order of the President of India. Consequent thereto the Election Commission notified the election programme appointing 27th November, 1984 as the last date for making nominations, 28th November, 1984 as the date of scrutiny of nominations, 30th November, 1984 as the last date for withdrawal of candidature and 24th December, 1984 as the date of election in Orissa.
 - (ii) 7-Jagatsinghpur Parliamentary constituency in Cuttack district consisted of seven Assembly segments, such as, 35-Tirtol, 36-Erasama, 37-Balikuda, 38-Jagatsinghpur (S.C.), 42-Govindpur, 53-Nimapara (S.C.) and 54-Kakatpur. The petitioner and respondents 1, 2 and 3 contested the election. The petitioner was a nominee of the Janata Party with election symbol 'Chakra Haldhar', respondent No. 1 was the nominee of the Indian National Congress with election symbol 'Hand', respondent No. 2 was the nominee of Lok Dal having election symbol 'Khet Jotata Hua Kisan' and respondent No. 3 was an independent candidate allotted with election symbol 'Horse'.
 - (iii) On 29th December, 1984 the Returning Officer declared the result of the election. According to him 5,54,523 votes were polled. Out of them 9,699 votes were rejected. Of the balance 5,44,824 valid votes, the petitioner got 2,61,538 votes, whereas, his nearest rival, respondent No. 1 received 2,62,625 votes. Therefore, with a lead of 1087 votes respondent No. 1 was declared elected. The other respondents received much less number of votes. The result of the election was incorrect and fabricated. Respondent No. 1 and his agents committed several corrupt practices. There was improper reception of invalid and rejected votes in his favour and rejection of valid votes which should have been counted in favour of the petitioner.
 - (iv) Respondent No. 1 and his agents committed the following corrupt practices:—
 - (a) They hired and engaged unsocial elements and let loose a reign of terror in the constituency who terrorised the voters and the workers of the Janata Party. In Tirtol segment a hardened criminal named, Dharmananda Behera was employed by respondent No. 1 who, with his gang equipped

with deadly weapons, came in two vehicles to the election meeting of Shri Biju Patnaik, President of the State Janata Party, held at Do-Sadaki on 7th December, 1984, assaulted Shri Patnaik and created disturbance, as a result of which, the voters who had gathered in the said meeting dispersed out of fear. F.I.R. was lodged at the Tirtol Police Station, but due to interference of respondent No. 1 no action was taken.

- (b) On 14th December, 1984 Dharmananda Behera along with other supporters of respondent No. 1 forcibly entered into the Janata Party election office at Sanara in Birtol Grama Panchayat and threatened the electors and the workers of the Janata Party and forced them on the point of dagger to join the Indian National Congress, work and vote for respondent No. 1. Again on 20th December, 1984 the said gang forced open the State Janata Party office and took away the microphone set.
- (c) On 23rd December, 1984 Dharmananda Behera and his gang and other workers of respondent No. 1 being directed by him and armed with deadly weapons came to village Dandasghi at about 2 p.m. and assaulted one Shyamsundar Samal and threatened that they will kill his master Patu Parija.
- (d) Thereafter they proceeded to Kanakapur bazar and held out open threats to kill the Chief Janata Party campaigner Shri Pratap Chandra Mohanty.
- (e) They further proceeded to Sahara Hat and criminally assaulted Sarada Charan Parija, Chintamani Das, Harish Roul and Sudam Charan Panda who were supporters of the Janata Party.
- (f) On 13th December, 1984 one Srinibas Swain, a well known anti-social element who was campaigning and canvassing for respondent No. 1 created a reign of terror at Chatua by holding out threats to the voters of the area that unless they would vote for respondent No. 1 they will be severely assaulted and their houses will be set on fire.
- (g) On the same day (13th December, 1984) in village Kolar another anti-social element employed by respondent No. 1 named Basanta Parija criminally assaulted Kumarbar Swain and Surendra Mohapatra who were workers of the Janata Party. They also threatened the voters of the area that unless they would vote for respondent No. 1, they will be killed.
- (h) In 7-Jagatsinghpur Parliamentary Constituency two assembly segments, such as, 38-Jagatsinghpur and 53-Nimapara were reserved for scheduled castes. The scheduled caste people of these segments belonged to Mallick community which included sub-castes Pana and Kandara. Respondent No. 1 belongs to the scheduled caste of Mallick community. During his election campaign he held several meetings in several places and met several people of his community and promoted caste and communal feelings. He propagated amongst them that because he belonged to their own caste (scheduled caste) they should cast their votes in the election in his favour. As a result, feelings of the scheduled caste voters against the petitioner who is a Sabarna Hindu ran high.
- (i) During the process of election respondent No. 1 himself, Shri J. B. Patnaik, Chief Minister of Orissa and Shri B. K. Biswal a powerful Minister of the State, openly gave out in public meetings at various places within the constituency promising to do various welfare activities for the people of different localities. Various inauguration ceremonies were conducted at government ex-

pense which were convened by government officials. High government officers also attended the meetings. All these activities were undertaken to induce and allure the voters of the area to vote for respondent No. 1. The date, place and other details of the meetings are as follows :—

- (1) On 17th November, 1984 in Tirtol Segment a bridge over the river Mahanadi was inaugurated by the Chief Minister.
- (2) On 22nd November, 1984 another meeting was organised at Balikuda segment for inauguration of Nagpur Jora Setu by the Chief Minister.
- (3) On the same day (22nd November, 1984) inauguration meeting of Paladhuwa Bandha was held.
- (k) A loan Mela (credit fair) was organised in Govindpur-Niali Block at the instance of Rabi Mallick, Chairman of the Panchayat Samiti who belonged to the Congress Party on 9th December, 1984, in the said loan Mela voters were allured to take loans and vote for respondent No. 1. Rabi Mallick was working in support of respondent No. 1.
- (l) On 20th December, 1984, 21st December, 1984 and 22nd December, 1984 utensils and blankets were distributed to voters of some villages of Terundia, Uchupur and Tulasipur Grama Panchayats in Nimapara segment through the local Sarpanches Raj Kishore Nayak, Krishna Chandra Das and Sikhar Sahu respectively at the instance of respondent No. 1 in furtherance of his election prospects and with the object of inducing the voters to vote for him.
- (m) In Nimapara segment several tube-wells were sunk in a number of villages on various dates in the month of December, 1984 at government expense but at the instance of respondent No. 1 in order to attract the voters of the villages to vote for him. The villages are Saifanga, Dhala, Amaranga, Chhabatia, Janra, Uchhupur (Muslim Sahi), Koilhana (Harijan Sahi and Dianka Sahi), Nuasantha (Brahmin Sahi), Dhirapur, Aul-Pingal, Chhanua (Harijan Sahi), Dhanuabasta, Balanga and Budhei (Harijan Sahi).
- (n) A new morum road with boulder base was laid in village Balanga at government expense at the instance of respondent No. 1 with a view to induce voters of the area to vote for him.
- (o) The following polling stations were completely captured at the instance of respondent No. 1 by his workers. The polling agents were forced out of the polling stations. The voters were forced to put the seal on the election symbol of respondent No. 1 and insert the ballot papers into the ballot boxes. The Presiding and the Polling Officers were mute spectators and did not prevent the illegal actions.
- A. Tirtol segment.—Polling station nos. 4-Krushnandapur, 41-Raipur Patna, 46-Banito, 75-Mulasing.
- B. Erasama segment.—Polling station at Banikunda.
- C. Kakatpur segment.—Polling station nos. 5-Bada-gaon, 121-Karanjapur.
- (p) The following irregularities were alleged to have been perpetrated in counting of votes, all of which were done in connivance with respondent No. 1 so that he would win the election.
- (1) There was improper acceptance of 501 rejected and invalid votes which were counted in favour of respondent No. 1 as per the details stated in schedule 'A' of the election petition.
- (2) Accounting and totalling of votes in different Assembly segments were deliberately incorrectly done so as to increase the number of votes of respondent No. 1.

- (3) From Part I of Form 20 relating to Nimapara segment it will appear that actually respondent No. 1 received 38,445 votes, but it was wrongly shown as 38,453 votes. These 8 votes were wrongly counted in favour of respondent No. 1.
- (4) In Govindpur segment, 7 votes were added to the account of respondent No. 1 and in Tintol segment, 1 vote was similarly wrongly accounted in his favour.
- (5) Respondent No. 1 exploited his position as the nominee of the ruling party and by influencing government officers, who were entrusted with the safe custody of the ballot boxes after the poll was over, and in collusion with them managed to take away valid votes cast in favour of the petitioner so as to decrease the total number of votes obtained by him. The details have been stated in schedule 'B' of the election petition.
- (6) Respondent No. 1 managed to put extra account/spurious ballot papers after affixing the seal on his own symbol into the ballot boxes so as to increase the number of votes in his favour. The details have been stated in schedule 'C' of the election petition.
- (7) In Govindpur segment 72,777 votes were polled, out of which 1,409 votes were rejected. Thus there were 71,368 valid votes, out of which the petitioner had polled 38,881 votes, respondent No. 2 had polled 2,384 votes, respondent No. 3 had polled 1,410 votes and respondent No. 1 had polled 28,693 votes. At the time of counting it was noticed that the petitioner had polled 10,188 valid votes more than respondent No. 1, but in Part II of Form 20 it was found that only 70,956 votes were polled in Govindpur segment and the petitioner had received only 37,489 valid votes. So, 1,392 valid votes which had been received by the petitioner were either not taken into account or were managed to disappear clandestinely by the counting agency at the instance and in collusion with respondent No. 1 which has materially affected the result of the election.
- (8) Some ballot papers contained marks on the symbol of respondent No. 1 by instruments other than the seals supplied for the purpose. Although the polling agents of the petitioner objected for reception and counting of such votes in favour of respondent No. 1, no heed was paid to such objections. The detailed particulars have been stated in schedule 'D' of the election petition.
- (9) It would appear from the particulars given in schedule 'E' of the election petition that ballot papers which contained more than one seal mark against the symbols of more than one candidate should have been rejected, but they were counted in favour of respondent No. 1.
- (10) 4,338 valid votes which should have been counted in favour of the petitioner in addition to the votes declared to have been polled by him were illegally rejected. The details have been stated in schedule 'F' of the election petition.
- (11) As many as 38 tendered ballot papers detailed in schedule 'G' of the election petition were believed to have been counted in favour of respondent No. 1.
- (12) The Sub-Divisional Officer of Jagatsinghpur was an Assistant Returning Officer. He was asked to come to Cuttack by the Returning Officer with the counting results. Although he is said to have started from Jagatsinghpur at 10 a.m. he reached Cuttack at 5.30 p.m. The petitioner,

therefore, suspects that he manipulated the counting results in favour of respondent No. 1.

3. It is averred that on 29th December, 1984 the petitioner was declared to have been elected, but at the instance of Shri B. K. Biswal and Smt. Jayanti Patnaik, who came to the Collectorate premises, the result was manipulated and ultimately respondent No. 1 was declared to have been elected. It is stated that before the result was finally announced the petitioner made a specific prayer for recount pointing out the details of intimidations, interpolations, manipulations and over-writings in the accounts, but the Returning Officer refused to recount the votes.

4. With the above allegations of facts the petitioner has made the specific prayers which have been referred to earlier.

5. Respondent No. 1 filed an elaborate written statement. The essential facts pleaded therein relevant for decision of the issues raised are stated omitting the details for the sake of brevity. According to him the election petition does not satisfy the requirements of sections 81, 82, 83 and 117 and is liable to be dismissed under section 86 of the Act. Material facts in support of the allegations have not been stated and all the allegations made are false, incorrect, vague and indefinite. The Returning Officer and the counting officers against whom allegations have been made, having not been added as parties to the election petition, the same is bad for non-joinder.

6. The process of election did not start prior to 20th November, 1984 when the 8th General Election to the House of the People was notified by an order of the President of India. After initial counting of votes it was noticed that 5,54,523 votes were polled including postal ballots. Out of them 9,699 votes were rejected. Of the balance, the petitioner got 2,61,538 valid votes, whereas, respondent No. 1 had received 2,62,525 valid votes. Thus respondent No. 1 secured a majority of 1087 valid votes and was declared elected, but subsequently at the time of filling up of the index card discrepancies were detected in boothwise computation made for Govindpur segment. It was found that votes pertaining to four polling stations of the said segment namely, polling station No. 109, Pokharigan M. E. School, polling station No. 110-Pokharigan U.P. School, polling station No. 111-Kurangi U.P. School and polling station No. 112-Kalanha L. P. School, had not been counted and reflected in Part I of Form 20. In the above named four polling stations the petitioner had received a total number of 892 votes, whereas, respondent No. 1 had polled 797 votes out of the total of 1821 votes, 32 votes were rejected. Respondent No. 1 had received 60 and respondent No. 2 had received only 40 votes. After the votes polled in the above named 4 polling stations were taken into account it was found that the difference of votes between the petitioner and respondent No. 1 was reduced from 1087 to 958. So a fresh final result sheet in Part II of Form 20 was prepared. Thus the petitioner had not received the highest number of valid votes.

7. There was proper counting of ballot papers according to the seal mark put on the election symbol of each candidate. There was no improper acceptance or rejection of votes. Votes which were liable to be rejected were actually rejected. Votes liable to be rejected and should have been rejected were never counted in favour of respondent No. 1. Votes which should have been counted in favour of the petitioner were not rejected.

8. In respect of the catena of corrupt practices stated in the election petition, respondent No. 1 has made categorical denial of each alleged event. According to him, he did not engage or employ unsocial elements and criminals as his agents or workers for taking part in the election campaign. He did not know Dharmananda Behera or his gang. The voters, supporters or workers of the Janata Party were not terrorised at his behest. The workers of the petitioner were neither threatened nor assaulted by his own workers or supporters. It was not true that at his instance Dharmananda Behera and his gang arrived at Sarala Road-Dosadaki meeting of Shri Biju Patnaik and threatened all the persons present and dispersed the same by force. It was equally untrue that at his instance his supporters forcibly entered inside the petitioner's election office at Sanara, assaulted persons and forcibly removed the

microphone set. As a matter of fact, in the Lok Sabha election held in March, 1980 the petitioner was defeated by respondent No. 1 by a margin of about 60,000 votes from the same constituency. The petitioner is not a resident of the constituency and does not command political support of the people for whom he has done no welfare work. He has brought false and malicious allegations of corrupt practices.

9. Respondent No. 1 did not promote casteism or communalism amongst the scheduled caste villagers in course of his election campaign. On the other hand, the petitioner who himself belongs to Khandayat caste preached and propagated castesim amongst the Khandayat villagers.

10. In the meetings referred to in the election petition, neither the Chief Minister Shri J. B. Patnaik nor Shri Basanta Kumar Biswal, a Minister of State, nor respondent No. 1 held out any promise of welfare activities to allure the voters of the respective localities to vote for the latter. Respondent No. 1 attend and presided over the meeting as a sitting Member of the Parliament and not as an intending candidate for the ensuing Lok Sabha election. The officers attended the inauguration ceremonies as part of their official function. No election meeting was organised by respondent No. 1 at government expense.

(i) As already stated above, the electoral process did not commence prior to 20th November, 1984. The newly constructed bridge over the river Mahanadi at Tirtol-Kolar Road was scheduled to be inaugurated on 2nd November, 1984. But the function was cancelled on account of the national mourning on account of assassination of the Prime Minister of India, Indira Gandhi on 31st October, 1984. So the inauguration took place on 17th November, 1984. In the said inauguration ceremony none of the dignitaries present made any election propaganda in favour of respondent No. 1.

(ii) The inauguration of the bridge over Nagpur Jora at Balikuda was held on 22nd November, 1984. The function was organised by the State Government, but there was no public meeting. Officers of the works department and other Ministers were present, but no allurement was held on to the villagers so as to vote for respondent No. 1 during the inauguration ceremony as an election meeting. Respondent No. 1 filed his nomination paper on 24th November, 1984 and so on the date of the inauguration ceremony he did not hold himself out as a candidate.

11. No meeting was convened and conducted on 22nd November, 1984 for inauguration of Paladhua Bandha Project. As a matter of fact, the bridge has not yet been completed. Respondent No. 1 was in no way connected with any loan Mela organised in Govindpur-Niali Block on 9th December, 1984. Although Rabi Mallick was his counting agent he was also not responsible for the loan Mela.

12. Utensils and blankets were not distributed by the workers of respondent No. 1 to the voters of the villages as alleged in the election petition.

13. Respondent No. 1 has denied any responsibility with regard to sinking of tube-wells in various villages of Nimapara segment as an election gift. According to him, under the Rural Water Supply Scheme tube-wells were provided to different villages as per the decision taken by the Puri District Development Board. The tube-wells had not been sunk to improve his election prospects.

14. Respondent No. 1 has denied that the morum road with boulder base in village Balanga was laid at his instance for the purpose of attracting local votes. He learnt that construction of the road work started on 17th October, 1984 and was completed on 26th October, 1984 before the election programme ensued. It was a development project undertaken by the local Block Development Officer unconnected with the election.

15. It is emphatically stated that respondent No. 1 did not commit any corrupt practice, did not exert undue influence on any body, did not bribe any one, did not misuse official machinery or public fund during his election campaign in

order to improve his election prospects. His agents and workers did not capture any polling station much less those at Tirtol, Erasama and Kakatpur segments. The polling agents of the petitioner were neither forced out of the polling stations nor were the voters forced to put the seal marks on the election symbol of respondent No. 1.

16. With regard to the alleged irregularities in counting of votes respondent No. 1 has stated that rule 56 of the Conduct of Election Rules, 1961 (hereinafter referred to as 'the Rules') which provides for the procedure for counting of the votes was scrupulously followed by the counting officers. They did not commit any sort of irregularities for advancing the election prospects of respondent No. 1 derogatory to the interest of the petitioner, 501 rejected and invalid votes were not counted in his favour and the particulars stated in schedule 'A' of the election petition are all vague, indefinite and speculative.

17. It has been denied that accounting and totalling of votes were incorrectly done and the votes received by respondent No. 1 were illegally increased for his benefit. Interested figures were not written in place of correct figures.

18. In Nimapara segment respondent No. 1 actually received 38,453 votes and not 38,445 votes as alleged. There was no increase of 8 votes. Seven votes were not illegally increased in favour of respondent No. 1 in Govindpur segment nor one vote was wrongly counted in his favour in Tirtol segment. Therefore, counting of 16 votes illegally in favour of respondent No. 1 is incorrect.

19. Respondent No. 1 did not influence any government officer taking advantage of his position as a sitting Member of the Parliament belonging to the ruling party. He did not take away valid votes cast in favour of the petitioner so as to increase his own number. The identity of persons who took away the votes has not been disclosed. The particulars shown in schedule 'B' of the election petition are, therefore, vague and indefinite.

20. The allegation that respondent No. 1 illegally managed to put extra account/spurious votes into the ballot boxes has been denied. The descriptions given in schedule 'C' of the election petition being vague and indefinite cannot be accepted.

21. In Govindpur segment the petitioner actually received 38,381 votes and respondent No. 1 had received 29,193 votes as would appear from Part II of Form 20. While initially preparing the final result sheet in Part II of Form 20 the total number of votes polled in Govindpur segment was computed at 70,956 against 72,777. The mistake occurred as the figures in respect of four polling stations as has already been referred to above were inadvertently not computed. Therefore, the allegation that 1392 valid votes cast in favour of the petitioner were either not taken into account or were managed to disappear clandestinely by the counting agency in collusion with respondent No. 1 is incorrect.

22. It is incorrect that ballot papers containing marks on the symbol of respondent No. 1 by instruments other than the seal supplied for the purpose were counted in his favour. No written objection was made by the counting agents. The details referred to in schedule 'D' of the election petition are vague, indefinite and incorrect. It is equally incorrect as stated in schedule 'E' of the election petition that ballot papers which contained more than one seal mark which should have been rejected were counted in favour of respondent No. 1.

23. The details mentioned in schedule 'F' of the election petition are wrong. The allegation that 4,338 valid votes which should have been counted in favour of the petitioner were rejected is incorrect. In the absence of any specific allegation with regard to Annexure A of schedule 'F' of the election petition the said Annexure A has to be ignored.

24. 38 tendered ballot papers details in schedule 'G' of the election petition had not been counted in favour of respondent No. 1.

25. The Sub-Divisional Officer, Jagatsinghpur who was an Assistant Returning Officer did not make any manipulation of votes in favour of respondent No. 1. As a matter of fact, counting of Erasama segment was completed at 11.30 a.m.

After the result sheets were prepared he left Jagatsinghpur at 4.30 p.m. and arrived at Cuttack at about 4.45 p.m. on 29th December, 1984. There was also no manipulation of any sort by Shri Basanta Kumar Biswal and Smt. Jayanti Pattnaik.

26. It is lastly contended that respondent No. 1 did not commit any corrupt practice, illegalities or irregularity in the conduct of the elections. He did not influence any government officer in charge of conduct of elections or otherwise so as to advance his election prospects. He also did not commit any act prejudicial to the interest of the petitioner. Accordingly, the allegations made in the election petition are wholly incorrect.

27. Respondents 2 and 3 did not contest the case and remained ex-parte.

28. On the pleadings of the parties, the following issues were framed :-

ISSUES

1. Whether the election petition is maintained in law?
2. Whether the election petition is liable to be dismissed under section 86 of the Representation of the People Act, 1951, for non-compliance of sections 81, 82, 83 and 117 of the said Act?
3. Is the election petition barred by laws of limitation?
4. Whether the recrimination application is barred by laws of limitation?
5. Whether the recrimination application is liable to be dismissed for non-compliance of sections 81, 82, struck off for want of detailed particulars as required under the Act?
6. Whether any or all the allegations of corrupt practice made in the election petition are liable to be struck off for want of detailed particulars as required under law?
7. Whether any or all the allegations of corrupt practice made in the recrimination application are liable to be struck off for want of detailed particulars as required under law?
8. Has the respondent No. 1 received the majority of valid votes?
9. Whether the first respondent and/or the gang headed by one Dharmananda Behera, at the instance and consent of the first respondent, created disturbance in the meetings of the petitioner, criminally intimidated and threatened the voters and unduly influenced the voters to vote for first respondent and not to vote for the petitioner?
10. Whether the first respondent, in order to further his election prospect and gain the support of Harijan voters, made an appeal and canvassed on the ground of caste, and promoted communal hatred between the Harijan voters against the petitioner?
11. Whether the first respondent, in order to further his election prospect and to defeat that of the petitioner, procured the assistance of any person in the service of Government, arranged credit fairs, distributed election gifts as described in paragraph 10 of the election petition?
12. Whether doubtful ballots as alleged in paragraph 11, Schedule-A and Annexure-A of the petition have been illegally counted in favour of the first respondent?
13. Whether the totalling of the figures entered in Part I Form 20 of respective assembly segments with respect to the first respondent is wrong?
14. Whether respondent No. 1 has been elected by majority of valid votes?
15. Whether any ballot liable to be rejected has been counted in favour of respondent No. 1?

16. Whether any ballot cast in favour of the petitioner has been illegally counted in favour of respondent No. 1?
17. Whether any ballot cast in favour of the petitioner has been clandestinely made to disappear from the ballot boxes?
18. Whether any spurious ballot has been introduced into the ballot box affixing the seal on the symbol of first respondent?
19. Whether any ballot liable to be rejected for bearing marks made otherwise than with instruments supplied for the purpose, has been illegally counted in favour of first respondent?
20. Whether there was canvassing by the polling party or any member thereof in favour of the first respondent on the date of polling inside the polling station?
21. Whether there have been manipulations to increase the number of votes actually cast in favour of respondent No. 1 to further his prospect of winning?
22. Whether the very process of counting was conducted by hand picked officers?
23. Whether the illegalities alleged in paragraph 22 of the election petition and detailed particulars thereof given in Schedule-G and Schedule-H, vitiate the election?
24. Whether the petitioner is entitled to be declared elected?
25. To what other relief or reliefs the petitioner is entitled?

FINDINGS

CORRUPT PRACTICES :

29. The following issues relate to corrupt practices alleged to have been perpetrated by respondent no. 1.

Issue Nos. 6 and 9, 10, 11 and 20.

The allegations of corrupt practices perpetrated by respondent no. 1 have been stated in brief in para 2(iv) and it is unnecessary to repeat the same.

30. It is settled law that allegations of corrupt practices are quasi criminal charges and the proof that would be required in support of such allegations would be as in criminal charges. Charges of corrupt practices are to be equated with criminal charges and proof thereof would not be preponderance of probabilities as in civil actions but proof beyond reasonable doubt as in criminal charges. Further, the corrupt practices must be committed by the candidate or his election agent or by others with the implicit or explicit consent of the candidate or his election agent. If the supporters of the candidate indulge in corrupt practices on their own without having been authorised by the candidate or his election agent, liability or responsibility for the same cannot be fixed with him and on that ground the election of the returned candidate cannot be voided. In support of the above principles there are a large number of decisions of the Supreme Court and different High Courts, but I would prefer to cite the latest one reported in A.I.R. 1985 S.C. 89, Surinder Singh v. Hardal Singh and others and A.I.R. 1986 S.C. 3, Ram Singh and others v. Col. Ram Singh, as well as, an unreported decision of this Court in Election Petition No. 6 of 1985, Arun Dey v. Gopanarayan Das and others.

31.2.(iv)(a) Disturbance in election meeting :—

This allegation of corrupt practice relates to the Janata Party election meeting organised at Sarala Road—Dosaikai which was forcibly dispersed by a notorious criminal and anti-social element of the area named, Dharmananda Behera and his gang at the instigation, knowledge and consent of responding no. 1. According to the averments in the election petition this meeting was organised on 7-12-1984. But P.W.

28. Jugal Kishore Nayak, the General Secretary of the State Juba Janata stated in his evidence that the said meeting was organised on 29-11-1984. With regard to the date of the meeting his version was supported by P.Ws. 29 and 48 and even the petitioner (P.W. 50). No doubt, with regard to the date of the meeting at Sarala Road—Dosa-daki there is variance between the pleading and the proof. But as deplored to by most of the important witnesses about this allegation of corrupt practice, the correct date of the meeting seems to be 29-11-1984.

32 In connection with this allegation, three important points deserve consideration. First, whether the Janata Party election meeting at Sarala Road—Dosa-daki was actually organised and a large number of persons were present to hear the State Janata President Shri Biju Patnaik, the petitioner and others; second, whether the meeting was completely disrupted because of the attack and disturbance created by a notorious criminal and anti-social element of the area named, Dharmananda Behera and his gang; and third, if the said act of Dharmananda Behera and his gang was perpetrated at the instigation, knowledge and consent of respondent no. 1. So far as the first two aspects are concerned, the evidence is overwhelming to which only a brief reference is necessary. P.W. 20 is a journalist who had taken part in the election campaign of the petitioner, P.W. 28 was the office bearer of Juba Janata at the State level. P.W. 29 is the Secretary of the Janata Party of Tirtol segment. P.W. 48 is a member of the Janata Party. P.W. 49, Shri Pratap Chandra Mohanty was in charge of the organisation of the elections of the Janata Party in the State and was a former State Cabinet Minister and P.W. 55, the petitioner himself, who indisputably is a top leader of the Janata Party, a former member of the Parliament and a Union Cabinet Minister. All of them though connected with the Janata Party have unanimously and unequivocally stated that the Janata Party election meeting held at Sarala Road—Dosa-daki, which was attended by a large number of voters of the area to hear the prominent leaders of the Janata Party, such as, Shri Biju Patnaik and others was disrupted on account of the disturbance created by Dharmananda Behera and his gang who arrived at the place of the meeting armed with deadly weapons raising slogans in support of the Congress (I) candidate in the vehicles. For fear of them the meeting was immediately dispersed, the persons assembled fled away, some leaders and others were manhandled and this took place in the mute presence of the police officers. Respondent No. 1, both in his written statement and evidence, has denied his responsibility with the disruption of the meeting, but has not adduced any evidence to show that there was no election meeting of the Janata Party at Sarala Road—Dosa-daki attended by Shri Biju Patnaik, the petitioner and other Janata Party leaders. It is true that all these witnesses are supporters of the Janata Party yet, they corroborated one another in this respect. Particularly two of them namely, P.Ws. 49 and 55 are respectable persons who were not supposed to speak falsehood with regard to organisation of an election meeting. They have also no axe to grind against Dharmananda Behera and his gang. Particularly the petitioner (P.W. 55) has nothing to do with these persons. Therefore, in view of these facts and evidence, I hold that the Janata Party election meeting organised at Sarala Road—Dosa-daki on 29-11-1984 was disrupted by Dharmananda Behera and his gang.

33. Even though there is allegation that the Janata Party election meeting organised at Sarala Road—Dosa-daki on 29-11-1984 was disrupted by illegal means by Dharmananda Behera and his gang of anti-socials, the petitioner is yet to prove by reliable and cogent evidence that it was so done at the instance, instigation, consent and knowledge of respondent no. 1 and that he was a privy to it. The petitioner has led evidence of P.W. 28 for proof of the above facts. P.W. 28 is a political worker and the General Secretary of the State Juba Janata. He was in charge of general supervision of the propaganda of the petitioner. There was proposal for holding the Janata Party election meeting on 29-11-1984 at Sarala Road-Dosa-daki. In order to make the meeting a success, the witness went to Tirtol on the previous day. He could not return to Cuttack the same evening and so he spent the night in the Janata Party office of Tirtol. Next morning, that is, on 29-11-1984 he came to the nearby bazar for tea and refreshments. The Congress Party office was

located in that bazar. When he was taking tea and refreshments in a stall, he saw respondent no. 1 coming to the Congress Party office in a jeep. He enquired about Dharmananda Behera and Narayan Raul and asked some others to call them. Hearing this the witness entertained some suspicion about the activities of the Congress workers and stayed on in the stall. About 15 minutes after Dharmananda Behera and Narayan Raul arrived at the Congress Party office. Respondent No. 1 told them that there shall be a large gathering in the Janata Party election meeting and many people from different parts will attend the same meeting in processions. Somehow or other disturbance should be created so as to disperse the meeting. He heard the above and after respondent no. 1 left the place he also left the stall. Whatever respondent no. 1 said was audible to the stall where he was sitting. He did not enquire about Dharmananda Behera and Narayan Raul from the stall owner because, he appeared to be a supporter of the Congress Party. The evidence of this witness cannot be believed for the following reasons:—

- (a) He is an active member and office holder of the Janata Party and was a staunch supporter of the petitioner at the time of the general election. Therefore, he is deeply interested in the petitioner;
- (b) The facts stated by him in his evidence were not specifically pleaded in the election petition by giving specific details of the corrupt practice;
- (c) There is no corroboration to the evidence of this witness which is partisan in character;
- (d) It was highly unlikely that respondent no. 1, a seasoned politician, would have imparted instruction to Dharmananda Behera and Narayan Raul to disrupt the Janata Party election meeting which could be audible to others, because the deal was secret in nature;
- (e) If respondent no. 1 imparted instructions to Dharmananda Behera and Narayan Raul for disruption of the Janata Party election meeting inside the Congress office, it was highly unlikely that the witness could hear the same staying outside in a tea and refreshment stall; and
- (f) It was highly improbable that respondent no. 1 imparted instructions on the road itself.

I am, therefore, unable to accept the evidence of P.W. 28 and hold that the petitioner has failed to prove that the Janata Party election meeting at Sarala Road—Dosa-daki was disrupted at the instance, instigation, consent and knowledge of respondent no. 1. In this connection, I would refer to A.I.R. 1985 S.C. 89 (supra) in which an identical allegation was made against the successful candidate. But for lack of evidence it was held by the Supreme Court that the consent of the appellant (successful candidate) for disturbing the meeting could not be proved. It was also held in A.I.R. 1986 S.C. 3 (supra) that it is well settled that the corrupt practices must be committed by the candidate or his polling agent or by others with the implicit or explicit consent of the candidate or his polling agent. Where, however, the supporters of a candidate indulge in a corrupt practice on their own without having been authorised by the candidate or his polling agent, the election of the returned candidate cannot be voided.

34. 2(iv)(b). Entering into the Janata Party office and threatening at the point of dagger.

There were two alleged incidents relating to the Janata Party election office at Sanara. It is alleged that on 14-12-84 Dharmananda Behera and his gang of anti-socials forcibly entered inside the said office and threatened the Janata Party workers at the point of dagger not to support the Janata Party candidate, but to support the Congress candidate. Again on 20-12-1984 they forcibly entered inside the said office and took away the microphone set. Practically no evidence has been adduced by the petitioner in proof of the aforesaid facts, as well as, the further fact that it was so done with the consent and knowledge or at the instigation of respondent no. 1. P.W. 7 is the Officer-in-Charge of Tirtol Police Station who had no personal knowledge about the incident relation to Sanara except producing a copy of the first information

eport (Ext.108). This first information report relates to an incident on 20-12-1984 and was lodged by one Ramesh Chandra Senka who stated therein that at about 11 p.m. Dharmananda Behera trespassed into the Janata Party election office and assaulted him and some others. He also took away the microphone set and a sum of Rs. 222 from his hands. Investigation was carried on and ultimately final report was submitted. P.W.20 has stated that it was reported to him that some goonda elements of the Congress party headed by Dharmananda Behera attacked the Janata election office at Janara and took away the microphone set. On the basis of the aforesaid evidence, I refuse to hold that this allegation of corrupt practice has been established.

35. 2(iv)(c) to (g) Threatening and assault on the Janata Party workers.

For most of these allegations no evidence has been adduced by the petitioner except examining P.Ws. 30 and 22. According to the evidence of P.W. 30, on 23-12-1984 at about 4 p.m. when he was proceeding to Bandhamunda to the house of Patu Parija alias Birapa Parija for whom he occasionally worked, Dharmananda Behera assaulted him. He did not lodge information in the police station. The aforesaid evidence does not at all connect respondent no.1 with the alleged incident, even if it took place. P.W. 22 was the Officer-in-Charge of Kujanga police Station. He has stated that on 13-12-1984 there was an incident at Chatua. When the supporters of the Congress party were holding a procession some supporters of the Janata Party chased them. The workers of the Janata Party assaulted the members of the Congress Party. He was also manhandled by them. They set fire to his motor-cycle. He recorded F.I.R. and on investigation charge-sheet was submitted against some persons. The aforesaid evidence, far from supporting the petitioner's case speaks of a different incident. Therefore, in the absence of any evidence the allegations have not at all been proved. On the ratio of the decisions already referred to, in the absence of explicit or implicit complicity of respondent no. 1 in the alleged corrupt practices, he cannot be held responsible and on this ground his election cannot be set aside.

36. 2(iv)(h) Caste and communal feelings.

7-Jagatsinghpur Parliamentary Constituency, however, is not reserved for scheduled caste and is a general seat although two reserved for scheduled caste and is a general seat although two of its segments, namely, Jagatsinghpur and Nimapara are reserved seats for the scheduled castes. The entire constituency is inhabited by people of scheduled castes, such as, Malliks, Panas and Kandaras. It has been alleged in para 9 of the election petition that respondent no. 1, during his election campaign, propagated casteism, roused communal feelings and promoted enmity and hatred for the caste Hindus so as to secure their votes and deprive the petitioner of the same. But material particulars as to the places, the dates and the times of this alleged corrupt practice have not been stated and so the allegations are of a general character.

37. The names of witnesses or other persons who informed the petitioner that respondent no. 1 roused communal feelings have not been stated. But the petitioner has examined as many as nine witnesses excluding himself for proof of the allegations. It is necessary to make a brief reference to the evidence of these witnesses so as to establish how hollow it is. P.W. 16 belonging to village Durga in Tiriol segment has stated that in a meeting of Harijans and caste people of the village respondent no. 1 told them to vote for him because he belonged to the scheduled caste and if elected he would do good work for the benefit of the scheduled caste people. The villagers were not influenced because they did not promise to vote for him. As a matter of fact, they did not exercise their right of franchise on the basis of caste or community. P.W. 17 belonging to village Nallara-Nuaran of Balikuda segment has stated that in a meeting of scheduled caste people of nearby villages respondent no. 1 requested the villagers to vote for him so that he would help them. The villagers said that they would help him. Subsequently the petitioner also came and held a meeting in the Bauri (Harijan) Sahi of village Podana and sought for their help in the election. He was told by the villagers that as respondent no. 1 belonged to their caste they had decided to help him in the election. P.W. 18 belongs to village Naharana of Balikuda segment. He has stated that respondent no. 1 came to his village and told the villagers to vote for him. The

Harijan voters discussed the matter. Two days after, the petitioner also came and requested the villagers to vote for him. They informed him that as respondent no. 1 belonged to the Harijan community he should not have approached them. P.W. 19 is a Muslim and belong to Mohiuddinpur of Jagatsinghpur segment. He has not supported the allegation that respondent no. 1 roused communal feelings and preached casteism while pleadings for votes. He has simply stated that respondent no. 1 approached the villagers from door to door and canvassed in his favour. P.W. 23 belongs to village Naharana of Balikuda segment. He has stated that respondent no. 1 came to his village and told the villagers that he was a Harijan and so the Harijans should vote for him so that he would do good work for them. On this assurance the people agreed to vote for him. In cross-examination, however, he has stated that Harijan voters of the village sat together and decided to vote for the Congress candidate, namely, respondent no. 1. P.W. 24 belongs to village Uchhupur of Nimapara segment. He has stated that in the village there were about 100 voters. They had decided to vote for the petitioner. But subsequently respondent no. 1 came, met the Harijan voters and told that he belongs to their community and so they should vote for him so that he would do some good work for them. Thereafter they decided to vote for him so that he would do some good work for them. P.W. 25 is also a villager of Uchhupur of Nimapara segment. He has stated that when Congress workers came to the village and met the voters, they told them that they would vote for the Janata Party candidate. Subsequently respondent no. 1 came to the Harijan Sahi and told the Harijan voters that if they would vote for him, he would do good work for them. They accordingly decided to vote for him. P.W. 26 belonging to village Kolana of Nimapara segment has stated that respondent no. 1 came to the Harijan Sahi and held a meeting of the Harijan voters. He told them that he was a Harijan and so like a brother to them. If they would vote for him he shall do good work for them. The petitioner is a non-Harijan and belongs to a higher caste. If Harijan people will go to him, he will not allow them to enter inside his house, whereas, he would admit the Harijan people to his own house. They also requested respondent no. 1 to provide drinking water to which he agreed and four or five days thereafter a tube-well was sunk in the Harijan Sahi. P.W. 27, a Muslim, belonging to village Uchhupur of Nimapara segment has not stated anything about the allegations. The petitioner (P.W. 55) has stated in a general way that respondent no. 1 promoted communal and caste feelings.

38. It is significant to note that the evidence of each witness has not been corroborated by any other witness. If their evidence is read and considered as a whole, one would get the impression that respondent no. 1 belonging to the scheduled caste approached the scheduled caste voters to vote for him. While appealing to them to vote for him, he might have stated that because he belongs to the scheduled caste he expected the votes from his caste men, although respondent no. 1 (R.W. 1) has denied in his evidence that he had done so.

39. According to section 123(3), the appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language shall be deemed to be corrupt practice. This provision was interpreted by the Supreme Court in A.I.P. 1985 S.C. 236. S. Harcharan Singh v. S. Sajjan Singh and others, with reference to the Amendment Act 40 of 1961 effected on 12-9-1964 and it was held that even a single appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste or community etc. would be corrupt practice. It was further held that the provision was enacted to eliminate from the electoral process appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our Constitution. Due respect for the religious beliefs and practices, race, creed, culture and language of other citizens is one of the basic postulates of our democratic system. The law has to be drawn by the court between what is permissible and what is prohibited after taking into account the facts and circumstances of each case interpreted in the context in which the statements or acts complained of might have been made. The court has to examine the effect of the statements made by the candidate upon the minds and feelings of the ordinary

average voters of this country. It was also held that the paramount and basic purpose underlying section 123(3) of the act is the concept of secular democracy. The inhibition of section 123(3) should not be permitted to be circumvented indirectly or by circuitous or subtle devices. The court should attach importance to the effect and impact of the acts complained of and always keep in mind the paramount purpose of section 123(3) namely to prevent religious influence from entering the electoral field. The nature and consequence of an act may not appear on its very face but the same can be implied having regard to the language, the context, the status and position of the person issuing the statement, the appearance and known religion of the candidate, the class of persons to whom the statement or act is directed, etc. As examples it was observed that it would not be an appeal to religion if a candidate is put up by saying 'vote for him' because he is a good Sikh or he is a good Christian or he is a good Muslim, but it would be an appeal to religion if it is publicised that not to vote for him would be against Sikh religion or against Christian religion or against Hindu religion or to vote for the other candidate would be an act against a particular religion'. It is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not. In each case, therefore, the substance of the matter has to be judged.

40. I have already found that the evidence of each witness has not been corroborated by order evidence and as has been rightly pointed out by way of caution in A.L.R. 1976 S.C. 1886, Karchaiyalal v. Mannalal and others, oral testimony will have to be judged with greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous assurance of a reliable nature from independent sources. Even if it is assumed that respondent no. 1 appealed to his caste men to vote for him, it would not amount to violation of section 123(3) of the Act for the simple reason that the voters were not influenced as has been admitted by some of them by such appeal and exercised their right of franchise according to their own independent judgment. The appeal, if any, did not arouse caste or anti-religious feelings against the petitioner belonging to a higher caste. Moreover, evidence is completely lacking to the effect that respondent no. 1 propagated hatred against caste Hindu uprising in election meetings not to vote for the petitioner, a caste Hindu, because he could ill-afford to do so, for, majority of the electorate in 7-Jagatsinghpur Parliamentary Constituency as a whole belonged to the higher echelon of the Hindu caste. I am, therefore, of the view that this allegation of corrupt practice as envisaged under section 123(3) of the Act has not been established.

41. 2(j)(1). Bridge over river Mahanadi in Tirtol segment.

On 17-11-1984 the bridge over river Mahanadi in Tirtol segment was inaugurated. In the inauguration ceremony, besides the Chief Minister another Minister of State, Sri Basanta Kumar Biswal and high officials were present. It is alleged that the inauguration ceremony was arranged at the instance of respondent no. 1 so as to induce the people of the locality to vote for him. In a meeting connected with the inauguration ceremony the Chief Minister declared that other development works, such as, laying out roads shall be started forthwith for the convenience of the people. In connection with this allegation it is necessary to consider the evidence of P.W. 11, the Sub-Divisional Officer, Jagatsinghpur. He has stated that on 17-11-1984 the bridge over river Mahanadi at Kolar was inaugurated and opened to traffic. The inauguration ceremony was followed by a meeting. The Works Department had made arrangements for the inauguration ceremony. Besides high officials of the Works Department, the Chief Minister and Sri Basanta Kumar Biswal, Minister of State, were present. They addressed the meeting. Respondent no. 1 as the sitting Member of Parliament was also present in the meeting. Besides making the above statement, the witness has stated nothing with regard to the allegation that promises were held out to the voters in the said meeting by the speakers so as to enhance the election prospects of respondent no. 1. No independent witness of the locality has been examined by the petitioner to prove the allegation. No document has been produced to show that at the instance

of respondent no. 1 the inauguration ceremony and the meeting were arranged. On the other hand, the newspaper publication in Daily Samaj dated 16-11-1984 (Ext. 109) shows that the inauguration ceremony and the meeting were arranged by the Civil Engineer, Roads, Orissa.

42. Earlier the bridge was to be inaugurated on 2-11-1984, but the function had to be cancelled on account of the national mourning for assassination of the Prime Minister of India on 31-10-1984. So the inauguration ceremony was postponed and was held on 17-11-1984. The electoral process did not commence prior to 20-11-1984. These indisputed facts will show that the inauguration of the bridge over river Mahanadi in Tirtol segment was unconnected with the general election to the Parliament.

43. 2(j)(2). Inauguration of Nagpur Jora Setu.

On 22-11-1984 the bridge over Nagpur Jora at Balikuda segment was inaugurated in which the Chief Minister, Orissa, two other Ministers and respondent no. 1 were present. According to the petitioner's allegation, in a meeting soon after the inauguration ceremony the people present were told to vote for respondent no. 1. In connection with this allegation it is necessary to make reference to evidence both oral and documentary. P.W. 11, the Sub-Divisional Officer, Jagatsinghpur has stated that the bridge called Nagpur Jora Setu was inaugurated on 22-11-1984. The Chief Minister, Orissa, Sri Basanta Kumar Biswal, Minister of State, Works, Sri Basudev Mohapatra, Revenue Minister and high officials of the Works Department were present in the function besides some local people. For the above function, however, pendal, microphone and loudspeaker were not set up. The function was organised by the State Government. Ext. 110 is advertisement in Daily Samaj dated 21-10-1984 with regard to the bridge called Nagpur Jora Setu at Balikuda. The advertisement was issued by the Chief Engineer, National Highways. P.W. 31 has stated that for inauguration of Nagpur Jora Setu there was propaganda in the locality and in response thereto a large number of people gathered at the place. Soon after the inauguration ceremony was over, a meeting was organised on a nearby playground. In the said meeting respondent no. 1 delivered a speech saying that he was responsible for construction of the bridge and as he was contesting the Lok Sabha election the people should vote for him. He further stated that he had done many good development work, and after he would win the election, he will do more development works in the villages, such as, digging of tube-wells, construction of bridges and roads. He also held out the promise that the road from Nagpur Jora to Paradip will be constructed. P.W. 32 has stated that on 22-11-1984 inauguration of Nagpur Jora Setu and Gonalpur Setu took place. Before the inauguration ceremonies took place, there was publicity in the locality that respondent no. 1 will be the candidate for the Lok Sabha election and would be the chief guest in the inauguration meetings. In the inauguration meeting at the playground of Balikuda respondent no. 1 stated in his speech that he will be the Congress (I) candidate in the ensuing Lok Sabha election. If the electors elect him, he would do development work in the area. The Chief Minister and other Ministers also delivered speeches.

44. Respondent No. 1 (R.W.1) has stated in his evidence that the bridge over river Mahanadi in Tirtol segment, which was to be inaugurated on 2-11-1984, was actually inaugurated on 17-11-1984. The inauguration function was arranged by the Works Department. He had attended the inauguration meeting as the sitting Member of Parliament of the constituency. By that date he did not know that he would be renominated to contest the ensuing Lok Sabha election as a Congress(I) candidate. The electoral process for the Lok Sabha election had not also commenced by then. Although all the dignitaries were present and he himself delivered speeches, no speaker in his speech raised the topic about the ensuing Lok Sabha election. It was also not expressed by anyone that he would contest the Lok Sabha election and none appealed for votes for him. Two bridges were constructed at Gonalpur over river Alaknanda and over the Jora at Nagpur in Balikuda segment. These two bridges were inaugurated on 22-11-1984. He attended the functions as the sitting Member of Parliament of the constituency. These functions were also organised by the

Works Department. After the inauguration of the bridges was over, no meeting was held as alleged and all the dignitaries left the places. Although many local people had gathered to witness the inauguration ceremonies, speeches were not made requesting the voters to vote for respondent no. 1 so that he would do development work in the locality. He has denied that the meetings were organised by him so as to enhance his prospects in the ensuing election. R.W.2 has stated that he was present when the inauguration ceremony of the Nagpur Jora Setu took place on 22-11-1984. There was a gathering of 200 to 250 persons. After the inauguration was over, the Chief Minister and other dignitaries including respondent no. 1 left the place. No meeting was held at the playground at Balikuda. Similarly, R.W.3 has stated that he had attended the said inauguration ceremony, but there was no meeting at the playground of Balikuda.

45. A consideration of the aforesaid evidence will show that though inauguration meetings had been organised on 17-11-1984 and 22-11-1984 which were attended by the Chief Minister of Orissa, Sri Basanta Kumar Biswal, Minister of State, Works, respondent no. 1 and other high officials, the functions were organised at the instance of the Works Department of the State Government. There is no evidence that they were organised at the instance of respondent no. 1 so as to utilise the platforms as meetings for his election campaign in order to enhance his prospects in the ensuing parliament election. Sufficient independent evidence of a reliable character has not been adduced to prove that in the inauguration ceremonies the electors of the locality were given promises that in case they would elect respondent no. 1 similar development works will be executed in their respective areas. Merely on the basis of allegations made by the petitioner who was obviously himself not present at any of the inauguration ceremonies and a few stray witnesses, such as, P.Ws. 31 and 32, it cannot be concluded that the inauguration ceremonies were organised at the instance of respondent no. 1 so as to be used as election meetings even before the latter had filed his nomination paper which he did on 24-11-1984.

46. 2(j)(3) Inauguration meeting of Paladhua Bandha.—With regard to the allegation of inauguration of Paladhua Bandha there are two versions. First, the inauguration ceremony of Paladhua Bandha took place on 22-11-1984 and second, the foundation stone was laid for the Paladhua Bandha over river Alaka in Erasama segment. According to the allegation made in the election petition, Paladhua Bandha was inaugurated, which means, after construction of the bridge at Paladhua it was opened for traffic. In his evidence, the petitioner (P.W.55) has stated that on 22-11-1984 in Erasama segment foundation stone for Paladhua Setu was laid. In that function the Chief Minister, Orissa and respondent no. 1 delivered speeches. In the meeting both of them gave out that if the people will vote for the Congress candidate in the ensuing Lok Sabha election, development work like construction of bridges in the area will be done. He has admitted that the function was arranged by the Chief Engineer on behalf of the Government. P.W.33 has stated that on 22-11-1984 a meeting took place at Paladhua in which assurance was given to construct a bridge over river Alaka. The advertisement in Daily Samaj dated 21-11-1984 (Ext. 110) shows that the foundation laying ceremony for a bridge over river Alaka at Paladhua was arranged by the Chief Engineer, National Highways. It thus appears that though a ceremony took place at Paladhua Bandha on 22-11-1984 it was not in connection with inauguration of a bridge as alleged in the election petition, but it was in connection with laying of foundation for a bridge at that place. Respondent no. 1 (R.W.1), however, has denied that on 22-11-1984 he had accompanied the Chief Minister to Paladhua Bandha either for inauguration of bridge or for laying foundation stone. In view of the aforesaid state of evidence, it is not established that respondent no. 1 committed any corrupt practice in connection with the function organised at Paladhua Bandha on 22-11-1984.

47. 2(k) Loan Mela in Govindpur-Niali Block.—It is alleged that a loan Mela was organised at Niali on 9-12-1984 in which loans were advanced to voters who promised to

vote for respondent no. 1. According to the evidence of P.W.3, no such loan Mela took place on the aforesaid date, but only one loan Mela was held on 24-11-1984. It was arranged by the Sub-Divisional Officer, Cuttack as would appear from the letter dated 13-11-1984 (Ext. G) addressed to the Block Development Officer, Niali. P.W.47 has stated that a loan Mela was organised on 16-12-1984 in the Niali school field near the Block office. Panchayat Samiti Chairman, Rabi Mallik and some others delivered lectures. Many persons of his village were present in the loan Mela. Rabi Mallik in his speech said that if the loan applicants would vote for Congress(I) candidate then only loans will be given to them. The witness and some others, of his village did not agree and loans were not given to them. The evidence of this witness runs counter to the authentic evidence of P.W.3 who has stated that the loan Mela was organised on 24-11-1984 and on no other date. Besides, this witness was a supporter of Janata Party candidate. Above all, R.W.6 Rabi Mallik has corroborated the evidence of P.W.3 and has stated that a loan Mela was organised on 24-11-1984 at village Krishnaprasad on behalf of Niali Block. This was the only loan Mela during November and December, 1984. Loans were advanced to the selected persons. The Block Development Officer and the representatives of several banks were present and loans were advanced to about 150 persons. He has denied that he delivered a speech to the effect that unless the applicants would vote for the Congress(I) candidate, loans will not be advanced to them. He is a member of the Congress(I) party. Besides the above evidence, there is no other evidence with regard to the loan Mela at Niali. If the evidence of P.W.47 and R.W.6 is taken out of consideration because of their partisan nature, the only evidence that is left behind is that of P.W.3 which does not at all establish the petitioner's allegation. I am, therefore, of the view that the allegation of a loan Mela being organised on 9-12-1984 at Niali Block has not been proved. If this be so, there was no question of advancing loans to those persons who promised to vote for respondent no. 1.

48. 2(l) Distribution of blankets and utensils.—P.W.43 is the only witness who has spoken of distribution of utensils and blankets to voters in some villages. According to him, in the night of 20-12-1984 one Raj Kishore Nayak distributed woolen rugs and steel utensils in village Terundia and persuaded the voters to vote for respondent no. 1. In cross-examination he has admitted that he did not go round the village with Raj Kishore Nayak, but he heard from villagers that he had distributed woolen rugs and utensils. No witness has been examined to prove that woolen blankets and utensils were distributed in the other villages named in the election petition, such as, Bada Amar Prasad and Chaurasi (Bhoi Sahi) under Tulasipur Grama Panchayat, Parbatipur, Uchhupur and Nuasantha (Harijan Sahi) of Uchhupur Grama Panchayat. P.W.43 was a supporter of the petitioner being his counting agent for Nimapara segment. His evidence is partisan in character, as well as, hearsay. Therefore, without corroboration from independent sources his evidence cannot be accepted. Accordingly, in the absence of evidence, it cannot but be held that the allegation of corrupt practice, such as, giving bribe in the shape of blankets and utensils to the voters of several villages has not at all been established.

49. 2(m) Sinking of tube-wells in villages at the instance of respondent no. 1.—With regard to the allegation of sinking of tube-wells as an election gift amounting to bribery in order to induce and influence voters of several villages during the process of election, only P.W.27 has been examined. It is stated that at the instance of respondent no. 1, the Block Development Officers made arrangement of sinking tube-wells in different villages on several dates just prior to the date of election. It is needless to say that there is complete lack of evidence with regard to part played by respondent no. 1 in the matter of sinking of tube-wells. There is also no material that actually tube-wells were sunk in the villages on the date stated in the election petition. In the evidence P.W.27 has stated that the petitioner came to the Muslim Sahi of village Uchhupur for his election propaganda. The people of the locality complained that although they gave him vote earlier, he did not make any

provision of drinking water. If he would make such provision then i.e. people will vote for him. Respondent no. 1 said that a tube-well will be sunk in the Muslim Sahi. Prior to the date of poll and actually 15 days before the date of poll, a tube-well was provided in the Muslim Sahi. In his cross-examination he has stated that the persons, who were installing the tube-well, told him on being asked that at the instance of respondent no. 1 they were sinking the tube-well. They further said that they were private persons and were doing the work after receiving money. They had been engaged by a contractor. The evidence of this witness has not been corroborated. Even if his evidence is accepted, it will not prove that respondent no. 1 installed the tube-well at his own expenditure because, no further evidence of the contractor or any other person connected with the installation of the tube-well has been adduced by the petitioner. Even if it is assumed that tube wells were installed in many villages and it was so done by the Government for the welfare of the people, respondent no. 1 cannot be involved with the programme to his disadvantage without any proof of having played a significant role for such installation in order to promote his election prospects. This allegation has not, therefore, been established.

50. 2(n) A new morum road with boulder base.—No evidence having been adduced to prove this charge of corrupt practice it has not been established.

51. 2(o) Booth capture by supporters of respondent no. 1.—It has been alleged that several polling stations in Tirtol, Erasama and Kakatpur segments were captured at the instance of respondent no. 1 by his supporters. The details of the allegations have been stated in para 20 of the election petition and the allegations have been denied in para 36 of the written statement. In order to prove the allegations, the petitioner has examined himself (P.W.55) and P.Ws.29 and 46. So far as the petitioner's evidence is concerned, it will appear that he had no personal knowledge of the booth capture. His knowledge was based on the information supplied to him by P.Ws. 29 and 46. In his petitions to the Returning Officer (Exts. E and E[1]) he did not mention about the allegations. P.W.29, who is the Secretary the Janata Party of Tirtol segment, has stated that in the polling stations at Repurpatna, Krishnanandapur, Mulsing and Coradia, the polling agents of the petitioner were not allowed to enter inside, because Dharmananda Behera had declared that if they do so they would be assaulted. Narayan Raul had also declared that the polling agents of the petitioner shall not be allowed to enter inside the polling stations on the pain of fine and assault. As a result, the polling agents of the petitioner sat outside the polling stations. When he went to the polling station at Krishnanandapur, he was told by the Janata Party workers who were outside that the polling agents of the petitioner were threatened and were not allowed to take their seats inside the polling station. They also informed him that the Congress workers standing on the verandah of the polling station were compelling the voters to vote for respondent no. 1 on the pain of future harassment. When he went to the polling station of Repurpatna, he saw from outside that the polling agents of the petitioner were not inside the polling station. The polling agents of respondent no. 1 alone were inside it. They were compelling the voters to put the seal marks on the ballot papers in their presence on the space against the symbol of respondent no. 1. In Mulsing polling station also he saw the same thing and further found that Dharmananda Behera was inside the polling station and was compelling the voters to vote for respondent no. 1. Aswini Mohanty, the polling agent of the petitioner of Mulsing polling station, told him that Dharmananda Behera did not allow him to enter inside the polling station. The polling agents of the petitioner of the polling station at Repurpatna were outside and gave him identical information. He did not make any complaint before the presiding officers of the respective polling stations. P.W. 46 has stated that he was the polling agent of the petitioner in Katanapur polling station of Kakatpur segment. Madhabananda Muduli was the polling agent of respondent no. 1 in the same polling station. Ananta Kumar Das was the presiding officer. Fifteen minutes after the polling commenced, about five persons belonging to the Congress Party named Anu Malik, Kunja

Parida, Abakash Muduli, Barubandhu Mallik and Sukadev Mallik came inside the polling station and declared that they will cast their votes twice and saying so forcibly drove the witness out of the polling station. He came out of the polling station, but remained outside and came to know that the aforesaid persons impersonated a large number of voters, gave their signatures in different names, affixed the seal marks against the symbol of respondent no. 1 and put the ballot papers inside the ballot box. From his cross-examination it appears that he was making election propaganda on behalf of the petitioner. P.W. 49, a Janata Party leader of the State, was in charge of election campaign on behalf of the party in Tirtol segment. He has stated that on the date of poll in Kolar-Jaipur polling station nobody was willing to act as the polling agent of the petitioner out of fear. Nevertheless, he had to arrange two polling agents. Sometime later when he came back to that polling station, he found that those two polling agents had left on account of threats. In Mulsing polling station the voters were in mortal fear and the polling station was not functioning properly. The same state of affairs prevailed in Birtol polling station. In cross-examination he has stated that he did not enter inside the polling stations. He did not remember the names of the polling agents of Mulsing polling station. The polling agents were inside the polling stations. They did not come out.

52. This is all the evidence adduced by the petitioner to prove his allegation of capture of some polling stations. P.Ws. 29, 46 and 49 were the supporters of the petitioner (P.W. 55) during the election. There is no independent evidence to corroborate their evidence though it could be available. The polling agents, who were actually threatened and were forcibly driven out of the polling stations to which they were assigned by the petitioner, have not all been examined. The presiding officers of the polling stations or the polling officers or some of them have not also been examined. The polling agents, as well as, the witnesses did not make any written complaint before the presiding officers about booth capture. Above all, there is no direct link between respondent no. 1 and Dharmananda Behera, Narayan Raul and others to give the slightest impression that if at all there was booth capture, it was done at the instance and with the knowledge and consent of respondent no. 1. Assuming some Congress Party enthusiasts exhibited high-handed behaviour in some polling stations and forced the voters to vote for the Congress (I) candidate, even then for their action, knowledge or consent of respondent no. 1 cannot be attributed. Undoubtedly, booth capture in an election at the instance of a candidate is a very grave charge and a corrupt practice. Such a charge has to be proved beyond reasonable doubt. But consideration of the evidence adduced by the petitioner does not induce me to accept the allegations of booth capture at the instance of respondent no. 1 to be true. Therefore, the allegations have not been established.

53. After giving my anxious consideration to the allegations of corrupt practices made by the petitioner against respondent no. 1 and on scrutiny of the evidence both oral and documentary adduced by him, I am unable to persuade myself to believe that the corrupt practices, which according to the settled principles of law should be proved as criminal charges beyond reasonable doubt, have not been so proved. Therefore, these issues relating to allegations of corrupt practices are decided against the petitioner.

RECOUNT:

54. The following issues have a bearing for the prayer for recount.

Issue nos. 12, 13, 15, 16, 17, 18, 19, 21, 22 and 23.

A large number of decisions were cited by the learned counsel for the parties with regard to the principle which should weigh with the Court before directing recount of votes. In the judgment in E.P. No. 6 of 1985 (*supra*) (rendered by me on 4-3-1987), I have dealt in extenso with the principles starting from A.I.R. 1964 S.C. 1249, *Ram Sewak Yadav v. Hussain Kamil Kidwai and Others*. The principles

have been summarised very lucidly in A.I.R. 1975 S.C. 2117, *Bhabhi v. Sheo Govind and Others*, as quoted below :—

"Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a Court can grant inspection, or for that matter sample inspection, of the ballot papers :

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations ;
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts ;
- (3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount ;
- (4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties ;
- (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void ; and
- (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper."

The other decisions are A.I.R. 1966 S.C. 773, *Dr. Jagjit Singh v. Giani Kartar Singh and Others*, A.I.R. 1970 S.C. 276, *Jitendra Bahadur Singh v. Krishna Behari and Others*, A.I.R. 1972 S.C. 1251, *Sashi Bhushan and Others v. Prof. Balraj Madhok and Others*, A.I.R. 1973 S.C. 215, *Smt. Sumitra Devi v. Shri Sheo Shankar Prasad Yadav and Others*, A.I.R. 1975 S.C. 283, *Beliram Bhalaik v. Jai Behari Lal Dhuchi and Another*, A.I.R. 1975 S.C. 376, *Suresh Prasad Yadav v. Jai Prakash Mishra and Others*, A.I.R. 1975 S.C. 693, *S. Baldev Singh v. Teja Singh Swatantra (Dead) and Others*, A.I.R. 1975 S.C. 701, *Ram Surat Singh v. Hari Chand Chandra Mihato*, A.I.R. 1980 S.C. 206, *N. Narayan v. S. Semmalai and Others*, and A.I.R. 1984 S.C. 396, *Hari Ram v. Hiru Singh and Others*.

55. Besides the above decisions, I would profitably make reference to a few other decisions which are relevant for the purpose of this case. In A.I.R. 1961 Kerala 188 P. Kunju Raman v. V. R. Krishna Iyer, *Vaidilalnagam*, J. (as he then was) held that where there are good grounds to believe that the counting of the ballot papers was not in order and that the final figures might have been affected by a likely miscount on the part of the Returning Officer and the voting is very close, for example, when the successful candidate has succeeded only by a narrow margin of 23 votes, it is desirable to have a recount. In 40 E.L.R. 281, *Swami Rameshwaranand v. Madho Rao and another*, it was held that a mere allegation that the petitioner suspected or believed that there had been an improper reception, refusal or rejection of votes would not be sufficient for ordering inspection. But no hard and fast rules could be laid down in this matter. In this particular case it was held by the Supreme Court that the discovery of 49 votes out of a bundle of 50 votes in Khalsa Jurasl segment, if correct, would show that there had been serious irregularities in the matter of counting of votes at that polling station. The irregularity alleged was of such a grave nature that in the interests of justice it was a matter which called for scrutiny. Ultimately, inspection of the ballot papers of the segment was directed by the Court. In A.I.R. 1975 S.C. 283 (supra) interpreting rule 63 of the Rules it was held as follows :—

"Alok's version receive full assurance from the circumstance that even in the belated application Ex. D.W. 13/2 no irregularity or illegality, whatever, in the counting was mentioned; All that was stated therein was that the appellant was not satisfied with the counting and therefore wanted a recount. It did not contain any ground on which a recount was sought, and as such, did not comply with the mandatory requirement of Rule 63(2) of the Conduct of Election Rules, 1961, which provides that after the agreement of the result of counting a candidate or in his absence his election agent or any of his counting agents may apply in writing to the Returning Officer to recount the votes either wholly or in part stating the grounds on which he demands such recount. The whimsical and bald statement of the candidate that he is not satisfied with the counting, is not tantamount to a statement of the 'grounds' within the contemplation of Rule 63(2). The application was thus not a proper application in the eye of law. It was not supplemented even by an antecedent or contemporaneous oral statement of the author or any of his agents with regard to any irregularities in the counting. It was liable to be rejected summarily under sub-rule (3) of Rule 63, also. That apart, it was presented about half an hour after the Returning Officer had completed and signed the result sheet in Form 20. Sub-rule (6) of the Rule expressly debars the Returning Officer from entertaining an application for recount at such a late stage. The Returning Officer had therefore, rightly rejected the application as belated."

In A.I.R. 1975 S.C. 403, *Chana Singh v. Ch. Shiv Ram Verma and others*, Krishna Iyer, J. speaking for the Court observed that rule 63 of the Rules obligates the candidate to state the grounds on which he demands such account. A mere doubt or small lead or unspecified blemish in the manner of the counting falls short of the needs of the said rule. Under the rule the demand for recount may be rejected if it appears to the Returning Officer to be frivolous, or unreasonable what is not reasonably grounded or seriously supported is unreasonable or frivolous. Suspicions of possible mischief in the process or likely errors in counting always linger in the mind of the defeated candidate when he is shocked by an unexpected result. The Returning Officer has to be careful, objective and sensitive in assessing the legitimacy of the plea for re-running the course of counting. Victory by a few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. His Lordship administered a wise caution and observed that if the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious trying if recount of votes is made easy. The best surmise, if it be nothing more than surmise, cannot and should not induce the judge to break open ballot boxes. If the lead is relatively little and/or other legal infirmities or factual flaws hover around, recount is proper, not otherwise. In short, where the difference is microscopic, the stage is set for a recount given some plus point of clear suspicion or legal lacuna militating against the regularity, accuracy, impartiality or objectivity bearing on the original counting. Of course, even if the difference be more than microscopic, if there is a serious flaw or travesty of the rules or gross interference, a liberal repeat or recount exercise to check on possible mistake is a fair exercise of power. To tarnish the counting staff with bias is easy for any party who divorces means from ends. When the challenger belong to the party in power a heavy strain is thrown on the strength of the moral fibre of the election staff whose fearless integrity is guarantee of purity of the whole process but whose fortunes, before and after elections, may be cast with a political Government whose keymen may sometimes take disturbingly keen interest in the outcome of elections and election results. The Court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates although what is more important is the survival of the very democratic institutions on which our way of life depends. In A.I.R. 1975 S.C. 693 (supra) rule 63 of the

Rules again came up for interpretation and important observations were made. Krishna Iyer, J. again spoke for the Court and observed :—

"The law regarding recount is, by now, well settled although defeated parties are not disenchanted from challenging the validity of the count through election petitions and persistent appeals. On the other hand, election petitions make averments manipulated to meet the requirements each new decision insists on. Even so, the facts of this case—not the merits of the claim—prompt us to make a pertinent observation. When the primary grievance of a party is error or other vitiating circumstances in the count and some ground not 'frivolous or unreasonable' exists, many candidates trek into the High Court complaining of ignored demands for a fresh counting, despite the existing guidelines in this behalf. The circumstances present here constrain us to make some concrete observations on the subject at a later stage in the hope that election authorities will respond sensitively on demand and reduce, by ready recount the avoidable feeling of injustice of rebuffed rivals in a close contest. The volume of election litigation may well being given more creative imagination and liberal approach in the exercise of powers under Rule 63 of the Conduct of Election Rules, 1961, instead of being rigid, resistant and indifferent. A stitch in time saves nine."

His Lordship again cautioned and said :—

"That largest democracy in the world, India, naturally has the most numerous electorate for a territorial constituency. Several thousands to a few lakhs of ballot for a constituency are polled and have to be inspected and counted in a rapid process; computers and like electronic devices which achieve in a twinkle what manual eyes and hands take long hours to perform are denied to us due to under-development and indigence. But we have human resources in abundance, to sort out, bundle up, count, check scrutinize and so on. Our poll finale relies on human power, and judging by the millions of votes which have passed through the assembly-line processes of mixing bundling, scrutinising, counting and rebundling—what with mammoth numbers and continuous work—the errors are microscopic. This tribute to Indian ability goes to the lesser level staff—the clerks and teachers, say—who bear the mechanical brunt of the Himalayan labours. When colossal heaps of votes are processed, the tellers may make chance mistakes. Even computers are not totally error-proof and, to err is human, physically fatigued and brain-fagged as they may be occasionally. Scrutiny by vigilant officials and test-checks may be good but jaded spirits cause slips. Complacent assumption of perfection, when the operation is gigantic, is a frailty of obtuse minds. That is why realism has induced Rule 63 and issuance of instructions to returning officers, rooted in practical wisdom. Given lively realism and imaginative understanding in the Returning Officers, many honestly sceptical and legitimately suspicious candidates who have lost the election may be stilled in their doubt by a recount, and the winner, after all, has no vested interest in error and cannot reasonably object. Such is the interpretative perspective of Rule 63 which has wrongly been lost sight of by P.W. 5, the Returning Officer, in the present case."

Ultimately it was concluded thus :—

"We frown upon frivolous and unreasonable refusals of recount by Returning Officers who forget the mandate of Rule 63 that allowance of recount is not the exception and refusal is restricted to cases where the demand itself is 'frivolous' or 'unreasonable'. These are strong words. The circumstances of each case decide. Where the margin of difference is minimal, the claim for a fresh count cannot be summarily brushed aside as futile or trumpery."

In A.I.R. 1980 S.C. 206 (supra) Fazal Ali—J. Interpreted rule 63(3) of the Rules and held :—

"Moreover, the relief of recounting cannot be accepted merely on the possibility of their being an error. It is well settled that such allegations must only be clearly made but also proved by cogent evidence."

It was further held :—

"Lastly, the learned Judge was greatly influenced by the fact that the margin by which the appellant succeeded was very narrow. This was undoubtedly an important factor to be considered but would not by itself vitiate the counting of votes or justify re-counting by the Court."

With the background of the principles with regard to recount, it is necessary to deal with the allegations made in the election petition demanding recount.

56. (1) Improper acceptance of 501 rejected and invalid votes.—There was improper acceptance of 501 rejected and invalid votes which were counted in favour of respondent No. 1 as per details stated in Schedule 'A' of the election petition. According to the indisputed counting procedure, the counting supervisor and the counting officers cannot outright reject ballot papers during counting. If they entertain any doubt with regard to one or more ballot papers which cannot be assigned to any particular candidate, they treat them as doubtful ballot papers which are kept in a separate bundle and sent to the central table for decision by the Assistant Returning Officer in charge of counting. The Assistant Returning Officer in charge of counting makes a close scrutiny of the doubtful ballot papers before reaching a decision as to whether the ballot papers or any one of them should be assigned to a particular candidate or should be altogether rejected. In the process of counting in election, it is inevitable that from out of the doubtful bundle, ballot papers shall be assigned in favour of a particular candidate and some of them must have to be rejected. In Schedule 'A' the petitioner has indicated that 501 ballot papers in different segments were allotted to the account of respondent No. 1 from out of the doubtful bundle. The serial numbers of the ballot papers have not been stated. Statements in general have been made by P.Ws. 29, 34, 33, 39, 41, 42, 43, 44, 48, 50, 51, 52, 53 and 55 about illegal acceptance and rejection of ballot papers. They did not however, file complaint in writing before the Assistant Returning Officer in charge of counting. As a matter of fact, some of the Assistant Returning Officers, who were examined as witnesses, have stated that they examined the doubtful ballot papers thoroughly in presence of the counting agents of the petitioner and as a matter of fact, written complaints had not been made before them to the effect that there was illegal acceptance or rejection of ballot papers.

57. It was pointed out in course of argument by the learned counsel for the petitioner with reference to Part II of Form 16 in respect of many polling stations in Tirtol, Erasana, Beliada, Govindpur, Nimapara and Jagatsinghpur segments that a number of ballot papers were counted in favour of respondent No. 1 from out of the doubtful bundles (Exts. 85, 35, 37, 25, 21, 18 and many others). On making reference to these documents, it is impossible to form a definite opinion that simply because some ballot papers were counted in favour of respondent No. 1, they should either have been rejected or should have been counted in favour of the petitioner.

58. The most important aspect is that a candidate, who has lost the election can very easily set up a case and make allegations that there was illegal acceptance and rejection of ballot papers. He can go to the extent of stating that such number of ballot papers which, according to him, should have been rejected or should have been counted in his favour, were ultimately counted in favour of the returned candidate. Not unlikely, he may also specify the numbers of ballot papers because they can very easily be available from the serial numbers noted in Part I of Form 16. It is easy for him to set up witnesses, such as, his counting agents in support of

such a plea. If a candidate sets up such a case should the Court accept the same and hold that there is a *prima facie* case for recount? In my opinion, such allegations alone do not tantamount to proof of a *prima facie* case for recount. Otherwise, if in every case such allegations are made, some imaginary particulars are furnished in the election petition and some evidence is adduced, there shall inevitably be an order for recount which is not consistent with the principle of secrecy of ballots. I am, therefore, of the view that the allegation of improper acceptance of 501 ballot papers from doubtful bundles in favour of respondent No. 1 has not been established.

59. Incorrect counting and totalling in Nimapara segment, wrong counting in Govindpur and Tritol segment non-counting of 1392 valid votes of petitioner in Govindpur segment.—In Nimapara segment the petitioner received 34,435 votes, whereas, respondent no. 1 received 38,453 votes according to Part II of Form 20 (Ext. 5). There is no evidence to show that respondent no. 1 had received 38,445 votes, but it was wrongly recorded that he had received 38,453 votes, thereby, wrongly counting 8 votes in his favour. In Govindpur segment the petitioner received 37,480 votes, whereas, respondent no. 1 received 28,396 votes according to Part II of Form 20 dated 29-12-1984 (Ext. 5). But from the revised result sheet dated 23-1-1985, the certified copy of which is Ext. D, it appears that the petitioner received 38,381 votes, whereas, respondent no. 1 received 29,193 votes. Thus there is apparent discrepancy between these two result sheets (Exts. 5 and D) relating to Govindpur segment. In Tritol segment the petitioner received 35,610 votes, whereas, respondent no. 1 received 44,496 votes according to Part II of Form 20 dated 29-12-1984 (Ext. 5). According to the revised result sheet dated 23-1-1985 (Ext. D) there is no change. It is, therefore, obvious that in respect of Govindpur segment, there was discrepancy in counting and totalling of votes. The reason for the discrepancy is on account of the fact that the votes secured by the petitioner and respondent no. 1 in respect of four polling stations, namely, 109, 110, 111 and 112 reflected in Part I of Form 20 were not computed and taken into account in Part II of Form 20. When this mistake was detected and the results of the aforesaid polling stations were finally computed as per Ext. D, dated 23-1-1985, the difference of votes between the petitioner and respondent no. 1 was reduced from 1087 to 958. Therefore, apparently there was grave error in counting and totalling of votes.

60. It is, however, the admitted position that in polling station no. 98 of Nimapara segment 155 ballot papers were found short, whereas, in polling station No. 98 of Kakatpur segment 155 ballot papers were found in excess. The reason advanced for the above discrepancy is that at the time of counting, the ballot boxes of these polling stations were inter-changed. Though there could be a possibility of inter-change of the ballot boxes because the ballot boxes of Kakatpur and Nimapara segments were kept in one strong room and the polling stations carried identical numbers at Puri, yet it exhibits gross carelessness of the officers charged with safe custody of ballot boxes and those in charge of counting which resulted in shortage and excess. To add to this, P.W. 3, the Assistant Returning Officer of Kakatpur segment, has stated that it was not possible for him to say in what circumstances 155 ballot papers were found in excess from polling station no. 98 of Kakatpur segment. It seems to be a gross irregularity giving rise to suspicion.

61. P.W. 8, the Assistant Returning Officer of Govindpur segment, has stated in his evidence that in polling station no. 86 of Govindpur segment 687 ballot papers were found. P.W. 21, the Assistant Returning Officer of Ersama segment, has stated in his evidence that from the ballot box of polling station no. 86, 664 ballot papers were found. There was discrepancy of 14 ballot papers which were missing from the ballot box. P.W. 11, the Assistant Returning Officer of Jagatsinghpur and Balikuda segments, has stated that the certified copy of Part I of Form 16 of polling station No. 76 shows that 700 ballot papers were issued to the Presiding Officer. He returned 166 ballot papers. 534 ballot papers were used. The certified copy of Part II of Form 16 (Ext. 24) shows that 542 ballot papers were

found in the ballot box. There was excess of 8 ballot papers according to the said document. Similarly in polling station no. 4 of Jagatsinghpur segment the certified copy of Part II of Form 16 shows that there was excess of 10 ballot papers. Even the Returning Officer (P.W.1) on reference to the certified copy of Form 16 of different polling stations has stated that excess or shortage was noticed. In this way, there was shortage or excess of ballot papers in different polling stations.

62. Several discrepancies were found in Parts I and II of Form 16 of a large number of polling stations. Some of them are illustrated below :—

Polling station No.	Ballot papers used	Ballot papers to be found in the ballot box	Ballot papers actually found
1	2	3	4
1. 91-Kosti L.P. School (Tritol segment)	460	459/458	455
2. 103-Kantapada U.P. School (Jagatsinghpur segment)	456	456/455	458
3. 21-Duadia U.P. School (Erasama segment)	550	550	551
4. 86-Ghangalia Temp. Shed (Erasama segment)	673	673	664
5. 144-Goda M.E. School (Erasama segment)	616	616	615
6. 76-Borikina L.P. School (Balikuda segment)	534	534	542
7. 4-Kalantika U.P. School (Jagatsinghpur segment)	479	478	488
8. 88-Patenigaon U.G.M.E. School (Jagatsinghpur segment)	557	557	555

63. P.W.1, the Collector, Cuttack, was the Returning Officer of the Jagatsinghpur Parliamentary Constituency. He was examined and cross-examined in detail from which it can be gathered that he has a thorough knowledge of the election law, rules and practice and had managed the general election with thoroughness and ability. In his evidence he was candid enough to make certain statements apparent on the face of the record without making the slightest attempt to concern anything. The statements are worth quoting, because they have a great bearing on the question of recount. He stated :

"In polling station No. 21 Duadia U.P. School in Ersama segment, there was excess of one ballot paper more than what should have been found in the ballot box according to the certified copy of form No. 16. In polling station No. 146 Anuri in Ersama segment there was excess of one ballot paper than what should have been found in the ballot box according to the certified copy of form No. 16. In polling station No. 158 of Ersama segment there was excess of eight ballot papers than what should have been found in the ballot box according to the certified copy of form No. 16. In polling station No. 76 Borikina L.P. School in Balikuda segment such excess ballot paper was 9 in number as would appear from certified copy of form No. 16. In polling station No. 4 Kalantika U.P. School of Jagatsinghpur segment such excess was 10 ballot

papers as would appear from the certified copy of form No. 16.

xx xx xx
xx xx xx

In polling station No. 72 Kuarpada in Kakatpur segment there was excess of one ballot paper as I see from certified copy of form No. 16. With regard to polling station No. 98 Fakir Patna U.P. School in Kakatpur segment there was excess of 155 ballot papers than what should have been found in the ballot box as I see from the certified copy of form No. 16. The fact that excess ballot papers were found in the ballot boxes were not brought to my notice before the declaration of the result.

xx xx xx
xx xx xx

I came to discover from form No. 16 of some polling stations of Govindpur segment before 23-1-1985. If it would have been brought to my notice that there was excess of large number of ballot papers before declaration of the result. I would have made an enquiry and only after enquiry I would have signed the paper relating to the declaration of the result. The Assistant Returning Officers did not bring to my notice about discrepancies in part 2 of form 16 compared to part 1.

xx xx xx
xx xx xx

By looking at form No. 16 of Polling station No. 98 of Kakatpur segment of the certified copy I do not find any mistake in arithmetical calculation. I have been shown the certified copies of Parts I and II of form No. 16 of the following polling stations. Comparing Part I with Part III notice the following discrepancies in the number of ballot papers by way of shortage which means the shortage of ballot papers found in the ballot box :—

No. of polling stations	Nos. of ballot paper found short
1	2
84 Ersama	1
86 Ersama	8
144 Ersama	1
2 Balikuda	1
84 Balikuda	1
90 Balikuda	1
111 Balikuda	1
131 Balikuda	1
27 Jagatsinghpur	1
31 Jagatsinghpur	1
24 Jagatsinghpur	1
86 Jagatsinghpur	1
83 Jagatsinghpur	2
95 Jagatsinghpur	1
139 Jagatsinghpur	1
86 Govindpur	10
91 Govindpur	1
121 Govindpur	1
98 Nimapara	155
3 Kakatpur	11
19 Kakatpur	1

1	2
45 Kakatpur	1
51 Kakatpur	1
57 Kakatpur	1
102 Kakatpur	1
120 Kakatpur	1
136 Kakatpur	1
149 Kakatpur	2"

With regard to the controversy of 155 ballot papers he stated :—

"I was not aware of missing of ballot papers except one case. So the question of making an enquiry did not arise. Had it come to my knowledge that 155 ballot papers were missing in respect of one polling station prior to declaration of result. I would not have declared the result. It was the duty of the Assistant Returning Officers to have brought to my notice in case of missing of ballot papers in large scale."

He tried to explain the position in the following manner :—

"With regard to polling station No. 98 Fakir Patna U.P. School in Kakatpur segment there was excess of 155 ballot papers than what should have been found in the ballot box, as I see from the certified copy of Form No. 16. The fact that excess ballot papers were found in the ballot boxes were not brought to my notice before the declaration of the result. But after declaration of the result, a few cases of Govindpur segment where there was excess of ballot papers were noticed by me after cursory check of Form No. 16. If the Presiding Officer of a particular polling station makes a wrong calculation, then there is possibility of finding excess ballot papers. The calculation means arithmetic. In order to find out if excess ballot papers have been found and noted, the mode of calculation would be verification of the unused ballot papers, counter-foils of the used ballot papers, the register maintained by the Assistant Returning Officers showing issue of ballot papers to the Presiding Officer of each polling station and the register maintained in the office of the Returning Officer showing delivery of ballot papers to each Assistant Returning Officer. I did not consider to make any enquiry with regard to the few and negligible number of excess ballot papers which I came to discover from Form No. 16 of some polling stations of Govindpur segment before 23-1-1985. If it would have been brought to my notice that there was excess of large number of ballot papers before declaration of the result. I would have made an enquiry and only after enquiry I would have signed the paper relating to the declaration of result."

With regard to the correction of the result he stated :—

"I did not give any notice to the candidates concerned with regard to correction of the arithmetical errors as the result which had been declared was not materially affected. I intimated of this fact to the Chief Electoral Officer and the Election Commission."

64 PW-13, the Assistant Returning Officer of Kakatpur segment, made the following statement with regard to polling station No. 98 Kakatpur :—

"From the certified copy of Ext. 12 which is Form No. 16 of polling station No. 98 Kakatpur, it appears from Part I that 702 ballot papers were issued by the Presiding Officer. From Part II, it appears that 857 ballot papers were brought out from the ballot box. The Counting Supervisor of polling station No. 98 Kakatpur did not fill up the column in Part II of Ext. 12 as to whether the total number of ballot papers shown against item No. II tallied with

the total shown against item No. 5 of Part I or any discrepancy was noticed between these two. Although I signed Part II, I also did not fill up the column. I cannot say in what circumstances 155 ballot papers were found in excess from the ballot box of polling station No. 98 Kakatpur."

65. PW-43, the counting agent of the petitioner in the central table of Nimapara segment, stated :—

"With regard to the shortage of 155 ballot papers of polling station No. 98 Bhodar, I made oral objection and also offered a written objection to the Assistant Returning Officer in charge of counting to make a proper enquiry, but he did not entertain my oral objection nor accepted the written objection. It showed me 10 or 12 ballot papers from the backs of which I found from the seal that the assembly segment No. 53 and the polling station No. 98 were mentioned."

66. PW-11, the Assistant Returning Officer of Jagatsinghpur segment, stated :—

"When all the bundles are brought to the table of the Assistant Returning Officer it is not necessary for him to count the ballot papers the bundles in respect of each candidate and accordingly I also did not count"

This statement is against a specific provision in the Hand Book of the Returning Officers which runs as follows :—

"To ensure further accuracy in the counting of votes 5% of the total number of bundles of valid ballot papers of the different contesting candidates shall be counted at your table."

67. It is now relevant to refer to some more decisions. In 40 E.L.R. 281 (Supra) it was held that discovery of 49 votes out of a bundle of 50 in the Khalsa Jurasi segment, if correct, would go to show that there had been very serious Lachanna Naidu and others, it was held that shortage and larity was of such a grave nature that it called for scrutiny. In I.L.R. 1972 Cuttack 439, 'Nala Kurumankuli v Daranu Lachanna Naidu and others, it was held that shortage and excess of ballot papers in some places establish a prima facie case for recounting. It was, however, held in I.L.R. 1978 (I) Cuttack 164, Inja Venkata Rao v. Bijoy Kumar Jena and others, that break counting as such, is no ground to vacate the declaration of the result. In A.I.R. 1975 S.C. 1863, Bonalal Das v. Rajendra Chandra Mardaraj Harichandan and others, it was held that error in entering results of counting in Form No 20 itself is a ground to allow recounting. In 26 E.L.D. 136, Jainarainlal Agarwal v. Nand Kumar Dani and others, it was held that mistakes in the final result sheet of counting is prima facie evidence which entitles the petitioners to have the ballot papers inspected and examined. In 42 F.L.R. 198, S. N. Misra v. Dr. Ram Manohar Lohia and others, it was held that when Part II of Form 16 does not correctly represent the result of counting, the final result sheet in Form 20 which is prepared on the basis of Part II of Form 16 is bound to be wrong and the correct position cannot be ascertained unless the ballot papers are inspected and recounted. In A.I.R. 1984 S.C. 654, D. P. Sharma v. The Commissioner and Returning Officer and others, there was discrepancy only relating to 20 ballot papers only which was not of much significance compared to the large number of votes polled in the election. It was, therefore, held that compared to the magnitude of the votes cast, the discrepancy as regards the excess ballot papers found in the ballot box was too insignificant. It was, however, observed that discrepancy which pertains to finding of excess ballot papers from the ballot box over and above those which had been issued and used by the voters would undoubtedly be very serious. It was noticed that it was not unlikely that some voter walked out of the polling stations along with ballot papers issued to them without casting them in the ballot box.

68. On 29-12-1984, the petitioner filed petitions (Ext. E and E/1) for recount pointing out several irregularities in respect of counting of ballot papers. Some of those grounds have also been taken in the election petition, such as, improper

acceptance of invalid ballot papers in favour of respondent No. 1 and rejection of valid ballot papers cast in favour of the petitioner. The Returning Officer, however, rejected the petitions for recount by his order (Ext. F). This fact is stated only to indicate that the petitioner seriously doubted the counting of ballot papers. In view of the narrow margin of votes and the mistakes in counting, as well as, the principle referred to earlier, it was a fit case for directing recount by the Returning Officer under rule 63 of the Rules.

69. The aforesaid statements and evidence show that there was shortage and excess of ballot papers which is indicative of the fact that there was gross irregularity in counting. Undoubtedly, there could be a few arithmetical errors in counting, but not to the large extent illustrated by this case. Errors and omissions in counting and missing of ballot papers are factors which materially affect the result of the election.

70. One of the contentions advanced by the learned counsel appearing for the petitioner was that the counting officers were completely exhausted because they were engaged in counting of ballot papers continuously for about 24 hours. That is why they committed several mistakes in counting. It appears from the evidence of PW-10, Sri N. K. Parija, Assistant Returning Officer, who was in charge of election of Balkukda, Tirtol, Erasama and Jagatsinghpur segments, PW-11, Assistant Returning Officer of Jagatsinghpur and Balkukda segments and PW-21, Assistant Returning Officer of Tirtol and Erasama segments that the same set of counting officers were employed who continuously worked for about 24 hours. None of the counting agents has, however, been examined to prove that the counting agents were overworked and so there was possibility of committing mistakes in counting. It is common knowledge that once the process of counting starts, it continues till the end and for sustained counting, officers having stamina are invariably selected. In any event, there is no clear proof that the counting officers lacked stamina and being overworked committed errors. This contention, therefore, does not stand for judicial scrutiny.

71. Government officers were influenced by respondent No. 1 to take away val'd votes cast in favour of petitioner and put spurious ballot papers.

It is true that respondent No. 1 was a sitting Member of the Parliament of the ruling party. But there is no clinching evidence that he had influenced the officers entrusted with safe custody of the ballot boxes so as to clandestinely interfere with the ballot boxes for taking away val'd votes cast in favour of the petitioner in order to decrease his total number of votes. General allegations to this effect are based on mere suspicions which cannot take the place of proof. Similarly, there is no positive proof that respondent No. 1 put spurious ballot papers into ballot boxes so as to increase the number of votes polled by him. Details stated in Schedules 'B' and 'C' to the above effect seem to be his conjectures.

72. Learned counsel appearing for both parties wanted some issues to be recast at the fag-end of hearing of the case. I do not, however, consider it necessary to recast the issues, because the points which the learned counsel urged with reference to the proposed issues have been covered by the discussions made on the existing issues.

73. I thus find that several mistakes and omissions crept into the records of the counting of ballot papers so much so that the Returning Officer (P.W. 1) was himself convinced that had it been pointed out to him that there were mistakes in the result sheet, he would have made further enquiry and would not have declared the result. It also so happened that after declaration of the result, he corrected the figures in the result sheet, whereby the margin of difference of votes between the petitioner and respondent no. 1 was reduced from 1087 to 958. Considering the fact that the total number of votes polled was 5,54,523, the difference of 958 votes was not high. This being the position the irrefutable conclusion is that the petitioner has been able to make out a prima facie case for recount of the ballot papers of Jagatsinghpur Parliamentary Constituency. It has been rightly held by the Supreme Court and repeated by this High Court that secrecy of the ballot is important, but doing justice is undoubtedly more important.

74. According to Mr. R. Mohanty, learned counsel appearing for the petitioner, the votes secured by respondent no. 1 alone should be recounted, whereas, Mr. G. Rath, learned counsel appearing for respondent no. 1, urged that in case this Court will direct recount, the votes secured by the petitioner, as well as, respondent no. 1 should be recounted, because a petition for recrimination under section 97 of the Act has been filed by respondent no. 1. The contention of Mr. Rath must prevail. According to the settled position of law, since respondent no. 1 has recriminated, the votes polled by the petitioner, respondent no. 1 and the rejected votes should be inspected and recounted. It is not necessary to recount the votes polled by the other candidates, because no dispute has been raised by the parties in respect of the same. In this connection, reference is invited to A.I.R. 1964 S.C. 1200, Jaber Singh v. Cincia Lal, A.I.R. 1975 S.C. 2182 Ram Avtar Singh Bhadauria v. Ram Gopal Singh and Others, and A.I.R. 1985 S.C. 150, Bhag Mal v. Ch. Prabhu Ram and Others.

75. Issue nos. 1, 2 and 3.

These three issues were not seriously pressed at the time of hearing argument. The election petition is not liable to be dismissed under section 86 for non-compliance of sections 81, 82, 83 and 117 of the Act, nor is it barred by law of limitation. The issues are decided accordingly.

76. The issues which have been left out shall arise for consideration after recount of the ballot papers and are referred for the time being.

77. Having taken a decision for recount of the ballot papers, I direct that there shall be recount of the rejected ballot papers and those secured by the petitioner and respondent no. 1. The Returning Officer of Jagatsinghpur Parliamentary Constituency and the District Election Officers of Cuttack and Puri districts shall produce the ballot papers of the above category of all the polling stations of the aforesaid constituency before the Registrar (Judicial) of this Court along with the ballot paper accounts in Forms 16 and 20 and all connected papers within 10 days hence. The recount shall take place in the High Court premises in a closed and properly guarded room. The Registrar (Judicial) shall take the help of as many Assistants of the High Court as he would deem proper for the purpose of speedy recount. The District Election Officers shall remain present personally and render necessary assistance throughout the recounting period. The Returning Officer shall also be free to remain present at the time of recount. The petitioner and respondent no. 1, learned counsel for both parties, one at a time, shall be free to remain present at the time of recount. No other persons shall be permitted to enter inside the room without specific permission of the Registrar (Judicial). Soon after the recount is over, the Registrar (Judicial) shall furnish his report to the Court. If the Registrar (Judicial) will consider any ballot paper or ballot papers to be doubtful or controversial and he will not be able to determine as to in whose favour the same shall be counted, he shall keep them separately in a sealed cover for the Court's scrutiny. The sealed cover may contain the seals of the parties and the Returning Officer/District Election Officers. After recount, the rest of the ballot papers shall be kept in sealed packets/boxes for safe custody.

Sd/- K. P. Mohapatra

Orissa High Court, Cuttack.

Dated, 14th May, 1987.

18th November, 1987

78. Issue nos. 4, 5 and 7.

These issues were reserved for decision after recount of the ballot papers of both the petitioner and respondent no. 1. After recount these issues were not pressed, because there seems to be no occasion nor any necessity for trial and hearing of the recrimination petition.

79. Issue nos. 8, 14, 24 and 25.

Registrar (Judicial) was directed to recount the ballot papers cast in favour of respondent no. 1, as well as the petitioner, with the help of a large number of Assistants of the High Court and in the presence of the parties and/or their agents and counsel. The officers of the District Election Office and/or representative of the Returning Officer were also present. The recounting report of the Registrar (Judicial) along with day to day records of recounting, all of which form part of the record, show that lot of labour and perseverance went into the recounting process which took quite a long time. Each and every ballot was thoroughly scrutinised, with regard to the dispute ballot papers, the counsel of the parties were also consulted and their opinion obtained. At the time of hearing, the learned counsel appearing for both parties did not in the least doubt the fairness of the recount.

80. Registrar (Judicial) after recount reported that the petitioner secured 2,60,813 votes and respondent no. 1 secured 2,61,386 votes, the difference being 573. He could not decide about 1500 ballot papers and referred the same for Court's scrutiny. All these ballot papers were scrutinised in Court in the presence of the learned counsel for the parties. After scrutiny, 240 ballot papers were counted in favour of the petitioner and 468 ballot papers were counted in favour of respondent no. 1 who is also entitled to the benefit of 59 postal ballots to be counted in his favour. Thus the petitioner finally gets 2,61,053 votes and respondent no. 1 gets 2,61,854 votes plus 59 postal ballots, total 2,61,913 the difference being 860.

81. After recount, the petitioner filed a petition for amendment of the election petition mainly on the following three ground :

- (1) Two hundred ballot papers which had been rejected and kept in the rejected bundle were counted in favour of respondent no. 1 at the time of recount.
- (2) Eight hundred ballot papers which had been counted of the petitioner were rejected for double marking of the seal although at the time of original count there were no such double marking of the seal. This was a suspicious circumstances.
- (3) The ballot box of polling station No. 98 Nimapura Assembly Segment did not contain the seal and seems to have been tampered with. Therefore, all the ballot papers found in the box are liable to be rejected.

82. Amendment petition was rejected after hearing both parties by order dated 20-10-1987, but the learned counsel for the petitioner was permitted to raise the points at the time of argument after scrutiny of the disputed ballot papers. So far as the first two grounds are concerned, they were not available to be agitated after the recount. When recount of votes takes place, parties are bound to gain or lose, because officers engaged in the recount scrutinise each ballot paper with more than ordinary care and in case of doubtful ones, consultations take place between the recounting officer and the counsel of the parties. It was unfortunate that the petitioner lost 800 ballot papers. May be, they had been wrongly counted in his favour. So far as the third ground is concerned, even if the ballot papers of this polling station are excluded from consideration, the ultimate result will not tilt in favour of the petitioner. Therefore, this ground is inconsequential.

83. It is significant to point out that when the result was announced and respondent no. 1 was declared elected, there was a difference of 1087 votes. The returning officer noticed some mistakes and himself made a calculation and made necessary correction on 23-1-1985. According to his calculation the difference was reduced to 958 votes. After recount, the difference is found to be 860 votes. Therefore, respondent no. 1 is declared to have secured majority of votes. Consequently the election petition is liable to be dismissed.

84. Two significant factors came to light at the time of the recount. The first is that a large number of voters do not know how to cast their votes and put the seal marks at wrong places. As a result, a large number of ballot papers are rejected. If the voters are able to cast their votes properly, in many cases result of election would be different.

No effort seems to have been made to educate the illiterate voters both in urban and rural areas prior to the election as to how they should cast their votes correctly. Even the candidates who seriously contest elections and reach almost every nook and corner of each constituency through propaganda do not attach any importance to this important aspect. For this reason one or more of them perhaps lose and suffer, because difference of a few votes tilts the balance in elections. The second surprising aspect is the carelessness of the presiding and the polling officers. In many cases it was found that the rubber seal was missing. What appeared on the ballot paper was just a smudged impression of the ink over the election symbol. The learned counsel for the parties explained that this was due to removal or loss of the rubber impression of the seal containing the arrow mark. It was unfortunate that the officers-in-charge of the polling stations did not notice this aspect and even if they noticed, they did not attach any importance to it. I hope and believe that the Election Commission of India and the Chief Electoral Officer of the State will take notice of these two aspects for taking suitable remedial measures.

85. Before parting with the case, I must record that the learned counsel M/s. Ranjit Mahanty and Bidyadhar Mishra appearing for the petitioner, and M/s. Gangadhar Rath, B. B. Mohanty and S. K. Das appearing for respondent no. 1 were not only helpful and cooperative to the Court, but also exhibited the rare qualities of fairness and dignity in conducting the cases of their respective clients, both of whom

are well known political personalities and held high political offices in the Centre and the State respectively. The parties themselves were present in Court on most of the dates of hearing and conducted themselves with dignity without slight exhibition of bile ness or rancour. In an election, a party is bound to succeed and consequently his rival is bound to lose. In a case in Court, similarly one of the parties is bound to succeed and his adversary is bound to lose. Finally so far as this Court is concerned, the petitioner has lost.

I commend the hard work and perseverance of Sri S. K. Mishra, Registrar (Judicial) of this Court and his officers who took great pains in making the recount with thorough scrutiny without being swayed away by person or political considerations.

86. In the result, the election petition is dismissed. Cost of Rs. 5000 (Rupees five thousand) is awarded in favour of respondent no. 1 which he can partly recover from the security deposit.

Sd./- K. P. MAHAPATRA

Dated, 18th November, 1987.

[No. 82/OR/(1/85)/87]

BALWANT SINGH, Under Secy.

